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BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION OF)
FAR WEST WATER & SEWER COMPANY, AN) DOCKET NO.
ARIZONA CORPORATION, FOR APPROVAL OF) WS-03478A-08-0608
INTERIM RATES AND CHARGES.)

At: Tucson, Arizona

Date: April 6, 2009

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Arizona Corporation Commission

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 222 of
4 said Commission, 400 West Congress, Tucson, Arizona,
5 commencing at 10:02 a.m. on the 6th of April, 2009.

6
7 BEFORE: KRISTIN K. MAYES, Chairman, via teleconference
8 PAUL NEWMAN, Commissioner

9 JANE L. RODDA, Administrative Law Judge

10 APPEARANCES:

11 For the Arizona Corporation Commission Staff:

12 Mr. Kevin O. Torrey
13 Ms. Robin Mitchell
14 Staff Attorneys, Legal Division
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16 Phoenix, Arizona 85007

17 For the Applicant:

18 FENNEMORE CRAIG
19 By Mr. Jay Shapiro
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21 Phoenix, Arizona 85012

22 For Residential Utility Consumer Office:

23 RUCO
24 By Ms. Michelle Wood
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COLETTE E. ROSS
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1 ALJ RODDA: This is the time set for the hearing
2 in Docket No. WS-03478A-08-0608, which is the
3 application by Far West Water & Sewer for approval of
4 interim rates for its sewer division.

5 Good morning, everyone, and welcome to the
6 Arizona Corporation Commission Tucson office. My name
7 is Jane Rodda and I am the administrative law judge
8 assigned to this matter. As I said before we got
9 started, Commissioner Mayes is also appearing
10 telephonically today.

11 The first thing I am going to do is take
12 appearances of the parties. So we will start with the
13 applicant, Far West.

14 MR. SHAPIRO: Good morning, Judge Rodda. And
15 good morning, Commissioner Mayes. Jay Shapiro from the
16 law firm Fennemore Craig on behalf of the applicant, Far
17 West Water & Sewer Company. With me today at the
18 counsel table on behalf of the company is Mr. Capestro
19 and Mr. Tom Bourassa.

20 ALJ RODDA: Okay, thank you.

21 And, oh, I am sorry, Michelle, I just remind
22 people that -- I never had to with Mr. Shapiro because
23 of his radio voice -- when you are speaking make sure
24 the green light is on the microphone.

25 So on behalf of RUCO.

1 MS. WOOD: Michelle Wood for RUCO. With me
2 today is William Rigsby.

3 ALJ RODDA: Thank you.

4 And then we have some intervenors, Seth and
5 Barbara Davis. Are they present here this morning?

6 (No response.)

7 ALJ RODDA: Let the record reflect that they are
8 not here this morning.

9 And on behalf of Commission Staff.

10 MR. TORREY: Good morning, Your Honor. Kevin
11 Torrey on behalf of Commission Staff and my co-counsel
12 with me is Robin Williams -- Robin Mitchell. And our
13 witnesses today will be Mr. Jerry Becker and Mr. Jian
14 Liu.

15 ALJ RODDA: Okay. Well, welcome all to Tucson.

16 First thing we are going to do this morning in a
17 minute is we are going to take public comment from
18 anyone who made the trip up here from Yuma who wants to
19 make public comment. Following that, depending how
20 long, and I have got the speaker slips, bear with me, in
21 order because I am not supposed to rearrange, following
22 that, dependent on how long that takes, we will probably
23 take a short break and then start with opening
24 statements by the parties. And then we will start with
25 the company's witnesses.

1 It is my understanding the company has two
2 witnesses, RUCO has one witness, and Staff has two
3 witnesses. And so that's the order we will proceed in.

4 Before I ask for public comment, I will ask the
5 parties, is there anything that we need to discuss
6 preliminarily? I am not aware of any outstanding
7 motions.

8 MS. WOOD: Not an outstanding motion but I was
9 going to correct that RUCO does have an ADEQ staff
10 member who will be testifying tomorrow.

11 ALJ RODDA: Oh, you have two witnesses?

12 MS. WOOD: She is not here today.

13 ALJ RODDA: Okay.

14 MR. SHAPIRO: Oh, well, that's a surprise to us.
15 This person's testimony was not prefiled.

16 ALJ RODDA: Right. I presume that it is
17 whatever, is rejoinder or whatever. What is it?

18 MS. WOOD: I believe it would be surrebuttal.

19 ALJ RODDA: Surrebuttal.

20 CHMN. MAYES: Your Honor.

21 ALJ RODDA: Yes, Commissioner Mayes.

22 CHMN. MAYES: If I could just jump in here, I
23 will certainly leave it to you to decide about the
24 propriety of the witness, I will say that at public
25 comment the Commissioners received a number of comments

1 from customers of Far West who were concerned about a
2 recent sewage overflow in one neighborhood, other
3 customers who had other quality of service concerns. So
4 I think the Commissioners are going to have questions
5 for both the company and DEQ with regard to the
6 company's history and compliance status with DEQ.

7 So, I don't know, one way or the other we are
8 going to have to get those questions answered, whether
9 it is in the hearing or on the day of the open meeting.
10 I would assume that Mr. Shapiro would prefer to have
11 those questions asked in the hearing.

12 ALJ RODDA: And I think an ADEQ witness is an
13 appropriate witness. It is just a question of whether
14 we can do it tomorrow because there is adequate notice.

15 MR. SHAPIRO: If I just may, Judge Rodda, if I
16 recall during the last procedural conference it was
17 Ms. Wood on behalf of RUCO who made the argument
18 regarding the very narrow scope of this proceeding. So
19 I think it is, it was a little misleading on RUCO's part
20 to make those statements and then surprise us with a
21 witness. What I don't know is whether I need more time
22 because I have no idea what they are going to say.

23 ALJ RODDA: Right. Ms. Wood, maybe you can
24 speak a little bit to --

25 MS. WOOD: I would be happy to, Your Honor.

1 Two issues. We tried to narrow the issues but
2 we were told by the company that they were going to
3 address some issues and we were told we would have the
4 opportunity for surrebuttal in the form of verbal
5 testimony. That's what we are doing. And I think
6 that's only fair considering we weren't afforded the
7 opportunity for surrebuttal when the bulk of these
8 issues were raised by Mr. Capestro in his first filing,
9 which was filed last Tuesday. So in terms of notice, it
10 is all fair.

11 ALJ RODDA: No, I think it is fair. It is just
12 whether we get a thorough record. So maybe what we can
13 do is we can proceed with the public comment now and get
14 started and maybe during the break we can have the
15 parties discuss a little bit more about the logistics of
16 this witness and --

17 MS. WOOD: Certainly.

18 ALJ RODDA: But I appreciate you bringing that
19 up now. I am glad you did.

20 Anything else?

21 (No response.)

22 ALJ RODDA: All right. Then I am going to
23 commence with the public comment portion of the
24 proceeding. So what I am going to do, I have a list of
25 forms that people have kindly filled out for me of

1 people wishing to speak this morning. I am going to go
2 through those forms. There is a significant stack here
3 and so I am going to ask the people to try to be
4 succinct in their public comments. We heard a lot of
5 public comments when we were down in Yuma. But if you
6 could keep within three minutes, I would appreciate it.

7 With that, I am going to ask you to come up to
8 the podium, make sure the green light is on -- I think
9 it is -- state your name and spell it for the court
10 reporter if you think that's necessary. And we will
11 start with Ron Taylor.

12 MR. TAYLOR: A little quick. Good morning,
13 everybody. I have a place up in The Foothills. And I
14 would be impacted by this.

15 ALJ RODDA: Can you put the microphone just a
16 little bit closer to you.

17 MR. TAYLOR: And I will be impacted by this rate
18 increase of 109 percent or even if it goes over to the
19 200 percent. I feel a raise in sewer rates is wrong and
20 poor planning on the part of Far West and its owners.
21 To ask us to pay to build more, so they can build more
22 housing just doesn't make any sense. And I am surprised
23 that the county would allow them building permits to
24 continue building.

25 But in such, there is a sewer system that's

1 located right off Interstate 8 just west of Avenue 8 in
2 Yuma. It is a same style of system that's used in
3 Congress, Arizona at the Escapee's RV North Ranch Park.
4 They have 418 deeded lots and a 109 space RV park.

5 I have some pictures here that I would like to
6 submit.

7 ALJ RODDA: You can.

8 Thank you, Ms. Wood.

9 MR. TAYLOR: If Far West wants to continue
10 building things, they can put in a system like this and
11 it will only impact the people of the development that
12 they are building for that can be fenced, enclosed, no
13 fishing or swimming allowed. And this way the people
14 that it is going to impact are the people of the
15 development and it won't impact the people that are
16 existing there.

17 I am a retired truck driver. I am on
18 disability. I get my whole thousand dollars a month.
19 And what am I going to do with a \$74 a month increase in
20 my sewer rates? If I bought an RV instead of my garage,
21 I would be paying \$11. But then I am paying homeowners
22 fees and rent and everything else. So it still amounts
23 to the same.

24 There is no reason for the rate increase. If
25 they can't do it properly, then they shouldn't be

1 building more places. Thank you.

2 ALJ RODDA: Thank you, Mr. Taylor.

3 The next card I have is Fred Forsyth.

4 MR. FORSYTH: Fred Forsyth, F-O-R-S-Y-T-H. One
5 of the group that we have been working on this program
6 wasn't able to attend and asked if I would present this
7 information on his behalf. With your permission I would
8 like to do that.

9 He is an electrical engineer. His name is Dick
10 Squires. And he is also a ratepayer. His comments go
11 as follows:

12 Far West claims they are operating at a
13 2.5 million loss in 2007, which is their test case, and
14 from which they filed an apparent, a permanent rate
15 increase, and they have to subsidize the sewer company
16 from the water company.

17 When the water and sewer company was separated
18 from the development company, H&S Developers, in 1998, a
19 fair value base rate was approved at 1.76 million. And
20 this was carried forward to their rate application first
21 filed in 2004 and approved in their rate increase in
22 February 2007. At that time, they claimed 5500
23 customers.

24 When purchasing a lot, this writer, along with
25 others, was under the understanding that water and sewer

1 supporting infrastructure were in place and we had to
2 pay for lot service and tie-in service only. So if the
3 entire infrastructure was transferred to Far West, the
4 rates should only have reflected a service and repair
5 rate with a contingency fund built each year for plant
6 replacement.

7 When retrofits and repairs are capitalized in
8 base rates, the company can increase the profits by
9 having the construction paid from capital and not
10 contributions to construction. And the ratepayers face
11 an increased base on a new rate base value instead of
12 Far West claiming the cost back to the construction
13 company based on poor design and installation.

14 For the majority of construction work, we see
15 H&S Developers doing the water and sewer work for Far
16 West, which is the same company that the utility was
17 transferred from in '98. Also, we do not see records
18 tendered for work, just a statement and testimony that
19 fair rates for construction are charged from H&S with no
20 oversight.

21 In the most recent filing the rate base
22 adjustments are described as retrofits and the lawyers'
23 use of a very liberal interpretation of retrofit meaning
24 any new installed plant which then turns the cost to the
25 ratepayers instead of the developing company.

1 Once -- since the turnover, there have been
2 numerous infractions, stop orders, consent orders sent
3 out by the ADEQ and other regulatory organizations. The
4 most outstanding was the order not to add any more
5 development until the errors were fixed. But in the
6 most recent filings for the rate increase and in the
7 emergency filing, the fair value base is reported at
8 23.4 million and the increase from 5500 customers to
9 7200 customers, by their own reporting an increase of
10 1700 customers and \$21 million in rate base.

11 When the company, Far West, undertook the latest
12 retrofit to the 14 1/2 Street plant as a result of
13 faulty design and undercapacity of the operating plant,
14 they asked for and received 25 million in IDA bonds
15 backed by the County of Yuma at low interest.

16 It should be noted that when the bond money was
17 applied for, the company pledged all assets from Far
18 West water and Far West sewer and in fact used some of
19 the bond money to upgrade a water plant. And when it
20 comes to the financials for the sewer company, all of
21 the debt load has suddenly become the sewer company's
22 new asset base. The financials failed to take into
23 account the depreciation and also the earned interest,
24 which, combined, is over \$1.4 million.

25 For the test period also the projected forecast

1 predicted the depreciation and interest will total
2 \$2.1 million in the company's own forecast, and yet they
3 claim an emergency. Forecasted financials show an
4 increase of 29 percent for wages when, by the company's
5 own admission, three and possibly four of the plants
6 will not be in operation, three of which are currently
7 shut down, fewer employees -- fewer facilities, I am
8 sorry -- and yet they are asking or reporting almost a
9 34 percent increase in expenses for wages.

10 The company's records also show an entry for
11 ongoing legal expense, which was incurred as a result of
12 poor management and design in the writer's opinion, and
13 the legal expense for the appeals in court proceedings
14 in the Yuma County Superior Court which resulted in
15 fines of 1.208 million and a payment schedule which
16 includes \$436,335 in interest until the year 2015. Also
17 some 336,300 in legal expenses has showed for the former
18 president. These expenses, according to the ACC rules
19 in establishing rate base, cannot be allowed.

20 During the questions to the company for the ACC
21 in the hearing process, it will be interesting to see
22 how much of the true financial position of the company
23 is established and what will be allowed to remain as
24 retrofit and actual new construction, because, as it is
25 now, the new plant at 14 1/2 should be entered as an

1 advance to construction or advance in aid to
2 construction by the development company to offset new
3 capacity and correct malfunctions in the incorrect
4 design and management of the older plants.

5 And in this writer's opinion there should be no
6 consideration given to any rate increase until a
7 forensic investigation is done on the operation and
8 design and accounting of all the Far West's combined
9 operations and, further, until at least the new plant is
10 operated for a period of time that will allow oversight
11 into design and overcapacity allowance forecasted by the
12 company to meet the new development needs and forecasts
13 of the area.

14 Thank you for your consideration.

15 ALJ RODDA: Thank you, Mr. Forsyth.

16 William Storey.

17 MR. STOREY: I am William J. Storey,
18 S-T-O-R-E-Y.

19 Since this is a rate case, I find that it is
20 extremely complicated. We found that in Yuma and some
21 of the comments made by people there make it even more
22 so. It is complicated, almost impossible to understand.
23 Some things are.

24 For example, some years ago I was asked to
25 review a financial thing for the vice president in

1 charge of wealth management in Texas of a firm. I did
2 an analysis, and it was quite simple. And I did it on
3 three separate occasions. And I came up with the same
4 comment, I don't know where they get their money from, I
5 don't know how they earn it. Guess what? That company
6 was Enron. And they didn't have the money.

7 We have something similar here, not that we
8 don't know where the money is, but where it has gone. I
9 tried to look at the balance sheets. And I say okay.
10 And I see averages being used to predict certain things.

11 Case in point, if you are an expanding utility
12 such as Far West and you are in a rate case where you
13 want to minimize your income and maximize your expenses
14 so that you will be able to get a bigger rate increase,
15 you will use an average, because down here you have the
16 first of the year, up here you have the end of the year,
17 and if you take an average, you will come up with the
18 middle of the year. Now, I tried to explore that more
19 fully and I came up with some interesting things.

20 For example, from the paperwork that was
21 submitted by Far West, I found that in one subdivision,
22 and only one that I could explore because I don't have
23 the time, money and efforts to do so, I came up with
24 they show an income of sewer of \$10,000 a year.

25 Well, first off, the administration of Far West

1 lacks a lot. As was testified in Yuma, there are a lot
2 of people that are on sewer who are not even paying a
3 sewer bill. And there are a lot of people who wanted to
4 pay their sewer and they were not allowed to pay it at
5 that time and said come back later. And we found a lot
6 of people that finally got their sewer bills, not for
7 the test year that are before the rate hearing, but
8 after 2008. In other words, their bills came due in
9 January of 2009. So the average of \$10,000 is not very
10 good. But when I counted up in that same subdivision
11 the people that went on the sewer and what the sewer
12 paid, I came up with a figure of \$82,000, 800 percent
13 over what is stated in the paper that I could find.

14 Now, we go on, because it is a very complicated
15 thing to find out what is the income of Far West based
16 on its customer. There is no certified or audited
17 customer list. I couldn't find out is it 7,000, 7152,
18 7500 or 8,000. Nobody seems to know. And as I
19 understand it, if somebody doesn't pay their bill at Far
20 West, it is taken as an operational expense and not
21 treated as a customer income.

22 Now, when we go through these things, it is very
23 complicated. So for the Yuma hearing I paid to have the
24 assistant director of finance fly out to Yuma, Arizona.
25 This gal happens to be a CPA, been in the business many

1 years and came out because she is in charge of the
2 financing of the water and sewer, the fire, and the
3 police of Colonial Heights, Virginia. I had her read
4 all the documents. And, quite frankly, she was shocked.
5 She couldn't believe that rates that were already higher
6 than anything they charge could be possibly going to be
7 increased 1- and 200 percent. And not only that, where
8 the comments were made by the people they don't see why
9 they have to pay for summer use when they are not here,
10 the answer is, well, we got to pay for it.

11 In Colonial Heights they have just the reverse.
12 The people in Virginia go to Florida in the winter. And
13 you know how they cope with that? They go on gallonage.
14 And that is the best way to pay for sewer rates,
15 gallonage. If you use water, you use the sewer. If you
16 don't use water, you don't use the sewer. And the rates
17 can be straightforward.

18 But all that pales by the fact that I said at
19 the testimony in Yuma that Far West has a flawed
20 business model. It still has a flawed business model.
21 And the flawed business model is this: When you go to
22 produce a company, you not only decide what it is you
23 are going to do, how you are going to staff it and how
24 you are going operate it, but you also capitalize it.

25 The capitalization of Far West sewer is

1 completely inadequate. It can't do the job. It might
2 have done the job when it had 500 customers but it can't
3 do the job now. And as I see it, from what I can read,
4 Far West is not expanding its capitalization. That's
5 how you pay it. They want the capitalization to be
6 increased to do their operations on the back of the
7 ratepayers. It does not work. It has never worked.

8 Let me give you an example. It is not a sewer
9 example; it is a football example. Green Bay, Wisconsin
10 owns Green Bay Packers. It is the only one in the NFL.
11 Guess what? They had a base -- a stadium falling apart.
12 They sold tickets. They were completely sold out
13 forever. You can't get a season ticket. So they
14 couldn't raise the price of their tickets. They
15 couldn't do anything. So what did they do? They had to
16 raise their capital, which is -- you know, if you take
17 business school 101 at any university, they will tell
18 you you got to capitalize. That's why restaurants fail.
19 That's why most businesses fail. They don't have
20 capitalization.

21 Green Bay Packers, you know what they did? They
22 issued nonpaying dividend stock, nonvoting stock, and
23 sold it all over. And they sold thousands of them. And
24 so they were able to redo their stadium and hire the
25 football players. That's what capitalization has to do,

1 and that is what Far West is not willing to do.

2 They talk about how their service is going to be
3 eroded. Like Far West has great service now? Far West
4 sewer and water is not good service. Their water is
5 terrible. Even the people who work for Far West have
6 their own water treatment system. It costs over \$1,000
7 a person or household to put in the reverse osmosis and
8 the other things to take the taste out of the water that
9 Far West is selling. If that's going to be worse, it is
10 going to be bad. So what do we do?

11 We look at that they don't have the money. And
12 we thought that both RUCO and the Staff did a wonderful
13 job. And one of the most -- had the biggest inside
14 question is why doesn't Far West put in their own
15 capitalization. They said they can't afford it.
16 Neither can the people who are taking the sewer. We
17 can't afford it. We are in the same bind. So what do
18 we have to say? If Far West can't do it, maybe they
19 ought to find another business to get into it.

20 We analyzed the thing and we feel that in our
21 area, we need a municipal sewer and water business that
22 will serve the people. It will be not for profit. It
23 will probably also qualify for a federal grant for
24 infrastructure capitalization. And Far West sewer can
25 go and do things else with their funds in something

1 besides a failed and really failed sewer system.

2 So we, the people, and I speak for many that --
3 we have some 400 that didn't come with me -- we, the
4 people, say this: We have looked it over, and we would
5 like the Commission and you, Your Honor, to say no to
6 any temporary increase, no to any permanent. They have
7 funds that are available, even if you have to go into
8 their depreciation account, where there are dollars
9 where it is not good to spend but they do have them to
10 spend. We want you to say yes to a complete moratorium
11 to all expansion facilities for both sewer and water.
12 We realize this might be a hardship but it will also put
13 the pressure. Let's make a decision and get this system
14 going correctly and in the right direction. Band-Aids
15 of increase in rates will not solve it. Far West needs
16 a lung and heart transplant and that can only come from
17 capitalization.

18 And, finally, we would like to say that we would
19 like to see that Far West be allowed to go into other
20 business other than the sewer and water that we are
21 paying for because we don't think that it is going to
22 work because they don't want to increase the capital,
23 and that is the only way. We are tired of being looked
24 at as a milk cow that has to be milked by some entity
25 that doesn't want to even put their own money in it.

1 Your Honor, we, the people, have spoken.

2 ALJ RODDA: Thank you, Mr. Storey.

3 Arthur Prevost, did you have --

4 MR. PREVOST: I was going to give my time to
5 Bill if he needed it.

6 ALJ RODDA: Okay, thank you.

7 Robert Rist.

8 MR. RIST: Good morning, Your Honor.

9 ALJ RODDA: Good morning.

10 MR. RIST: Far West Water & Sewer and H&S

11 development clearly have a conflict of interest.

12 Although they claim to be separate entities, they are
13 under the same ownership, the money is commingled, the
14 equipment is commingled, and I believe much of the
15 employees are commingled.

16 I worked in wastewater treatment for over 30
17 years before retiring. And I can tell you that in every
18 case, in every case where there was not a clear
19 separation of the funds generated by the water and
20 sewer, there was a problem. Money would be funneled off
21 for parks, libraries, and any other project that seemed
22 to be more important than the sewer. Then when the
23 plant was wore out or was undersized, there was no
24 money.

25 We, the ratepayers, have already paid for

1 additions to and expansions of wastewater treatment
2 plants and collection systems when we bought our
3 property. Documents given to me at the time of the
4 purchase clearly say that the base price included a fee
5 for sewer capacity.

6 And information being given out right now at a
7 current H&S development, El Rancho Encantado clearly
8 says the base charge for the lot includes a sewer
9 capacity charge. They don't spell out how much that
10 charge is. But in the case of the property that I
11 bought, the Realtor involved said it was \$950.

12 Where has that money gone? Current ratepayers
13 can't be expected to shoulder the burden of costs caused
14 by new growth. The ratepayers should not be expected to
15 pay for bad planning and engineering, or lack of it.

16 I know in the case of Palm Shadows wastewater
17 treatment plant, there either was no engineering or bad
18 engineering. Far West bought a packaged system from a
19 company called Santec, which surely had the engineering
20 approval for a packaged part of the plant. However,
21 since there was no place for reuse of the effluent, it
22 was decided to put in evaporation percolation ponds.

23 There is no way that proper perk tests could
24 have been done or they would have known that the soil
25 would not percolate. So what did they do? They added

1 more ponds that didn't work. And they didn't have
2 permits to add those ponds. And they violated ADEQ
3 setback rules for open treatment processes which caused
4 noise and odor.

5 Mr. Capestro states in his rebuttal that he does
6 not understand why the public feels that they are
7 unresponsive and incompetent. Let me address both of
8 those points.

9 First, as to the incompetence, myself and I
10 believe most of the public have no problem with the
11 competence of the employees. They are to be commended
12 for the certifications that Mr. Capestro states that
13 they have. Those certificates demonstrate the
14 competence of the employee. However, we do believe that
15 there is a total incompetence on the part of top
16 management, which includes Mr. Capestro and the two
17 shareholders of Far West Water & Sewer. If there were
18 any competence, proper planning would have begun a
19 decade ago.

20 Now, for the unresponsiveness, Mr. Capestro
21 states that they answer all complaints within 24 hours.
22 We have known cases in Vista Del Sol where customers
23 have made complaints of odors and they were dismissed as
24 unfounded or the customer was a troublemaker and a hot
25 head.

1 I recently made a request for information,
2 public information, from Far West and I was told that I
3 had to e-mail my request. I did that. I got no
4 response. So nine days later I e-mailed the second
5 request with a carbon copy sent to Robert Casey at ADEQ.
6 Again, no response. So after almost three weeks from
7 the first e-mail, I went back to the office to try
8 again. I was told that the information was in the
9 office of H&S development and I needed to leave my name
10 and address and phone number and they would respond. I
11 replied that I would go to the office, go to that other
12 office. At that, I was told, oh, no, you can't go to
13 that other office, there is no one there to help you.

14 I went over anyway. I stood at the front
15 counter and I was ignored until I rang the bell a couple
16 times. Again I was told to leave my name, address and
17 phone number. Two days later I got an answer in the
18 mail in which most of my request was referred to ADEQ.

19 I want to give a copy of my comments along with
20 some attachments that show my e-mails and what they did
21 respond with.

22 The final point I want to make today is that
23 many people that live in The Foothills are retired,
24 fixed income elderly. They have no way to increase
25 their income and this increase truly would be a

1 financial burden on them. Mr. Capestro would have us
2 believe that he and the stockholders are next to broke.
3 This sounds like a bailout to me, while the CEOs run off
4 with the money. Maybe they should sell a racehorse or
5 two.

6 If the Commission finds that this company should
7 remain in the hands of the people that put it in this
8 condition, then a way must be found to hold the
9 ratepayer harmless. Massive amounts of money from the
10 taxpayers are being passed out right now, which is going
11 to be another burden on us.

12 Find a way to get a grant to do these
13 expansions. ACC and ADEQ need to step up and do the
14 right thing for the citizens of Foothills, Arizona.
15 Thank you.

16 ALJ RODDA: Thank you, Mr. Rist. Did you have
17 something you wanted to leave with me? Can you just --

18 You can just hold it, Bill, until -- thank you.

19 The next speaker form I have is from Barbara
20 Gilkey.

21 MS. GILKEY: My name is Barbara Gilkey. I live
22 in The Foothills. I would like to submit my comments
23 and documents to the court reporter. And then I won't
24 speak.

25 ALJ RODDA: Okay. Thank you very much.

1 The next -- oh, Bob Gilkey, did you have
2 anything in addition?

3 MR. GILKEY: Thank you. And good morning,
4 Judge, Commissioner Mayes.

5 ALJ RODDA: Good morning.

6 MR. GILKEY: My name is Bob Gilkey. I live in
7 The Foothills. And I also have a copy, partial copy of
8 my comments that I will leave with the court reporter.

9 Why are we here? Well, the crux of it seems to
10 be we are here because of the ADEQ consent order that
11 Far West was required to sign in the prior decision, or
12 as part of the prior decision.

13 The company claims it required ADEQ construction
14 has caused it to be financially insolvent. The ADEQ
15 required construction has caused financial viability of
16 the company to be questioned. However, the company
17 accepts liability, as noted in Decision 69335,
18 February 2007, and entered in Capestro's rebuttal
19 testimony, March 21, 2009. In the rebuttal, line 3,
20 page 15 stipulates that the company accepted
21 responsibility for not keeping up with explosive growth
22 that took place in the service area.

23 On line 11 he goes on to say that the company
24 could spend a lot of time assessing blame and defending
25 itself from accusations. Then he goes on, but I urge

1 Judge Rodda and the Commission not to make this
2 emergency rate case about finger pointing.

3 Instead of finger pointing, it appears
4 Mr. Capestro believes that accepting responsibility is
5 passing the bill to the ratepayers, thus transferring
6 liability for the company's actions, inactions,
7 incompetence.

8 On page 3, line 23, Mr. Capestro in response to
9 the question is the company insolvent today, answer, I
10 really don't know. Then it goes on into detail, several
11 pages of financial statements about the condition of the
12 company, its inability to pay its bills, including its
13 property taxes which it was mandated to file a statement
14 that it had paid its property taxes in the last -- in
15 the prior consent order. And then on page 11, line 18
16 states Far West sewer division is clearly insolvent.

17 So in a matter of eight pages, he really doesn't
18 know if it is insolvent but then says it clearly is
19 insolvent. So which is it, is it the company insolvent
20 or not?

21 In response to a question on page 6, line 22,
22 why can't Far West borrow more money to finish the
23 necessary improvements, Mr. Capestro answers in part:
24 Let me put it this way, would you lend Far West, say,
25 \$2 million based on its current financial situation?

1 Apparently the stockholders don't wish to ante
2 up and pay in capital to the company. On page 14, line
3 4, he says \$8 and a half million was deposited in the
4 bank and the remainder was used to pay off the
5 short-term financing used for engineering and for down
6 payments on equipment.

7 That's a lot of money. That seems to me like
8 that's about \$11 and a half million to pay for
9 engineering and down payments on equipment. Wow.
10 Exactly where did this money go? Mr. Storey has asked
11 this question and I think it deserves to be answered.

12 Mr. Capestro then states only -- he lists
13 property that is now on line and in service that cost a
14 total of \$2,250,834. They have borrowed over
15 \$20 million. So why didn't a little bit more get
16 completed? That's not a sign of competence. Not paying
17 taxes is not a sign of competence.

18 And then he delineates another \$8 plus million
19 that's necessary to complete the sewer improvement
20 projects, which brings us to a total of something over
21 \$28 million to complete a \$20 million project, assuming
22 that there aren't any more errors, cost overruns, or
23 omissions or miscalculations.

24 On page 15, line 18, Mr. Capestro states an
25 estimated \$20 million will be needed for water system

1 improvements as well, which begs the question, did Far
2 West fail to collect adequate fees from itself, H&S
3 Developers, and others for the 9,000 or so lots that it
4 has developed to provide adequate infrastructure to get
5 water and sewer and roads, et cetera? Clearly the
6 answer is no. Now the ratepayers are being asked to
7 atone for Far West's shortsighted decision, or was this
8 not a case of dumber than dirt management, that a
9 deliberate plan to fleece the ratepayers.

10 In the prior decision, 69335, it was ordered,
11 amongst other things, to account for wastewater plant
12 retrofit costs separately from expansion costs in order
13 to allow the Commission to assure that costs to remedy
14 problems caused by prior contractors who did not meet
15 their obligations are not included in the rate base.
16 Nowhere in these applications for emergency rate relief
17 or for the permanent rate base is there a separation.
18 Apparently they made the mistake, we get the bill. Even
19 though the Commission authorized the company to enter
20 into a loan agreement, the company's assets, not the
21 rate base, were used as collateral.

22 Further, Long Island Lighting Company was
23 ordered to upgrade its infrastructure by the New York
24 Public Utility Commission because of deficiencies, very
25 similar to the situation with Far West, and then denied

1 a rate increase to cover the ordered upgrades.

2 And we all know about Washington Public Power
3 Supply System. They went in default. The bondholders
4 ultimately collected 15 percent plus or minus a percent
5 of the bond value because of that default. It became
6 noted the acronym whoops became associated with dumber
7 than dirt decision making.

8 No period of time, no sum of money are
9 sufficient to cure incompetence and greed. This would
10 seem to indicate the company is insolvent, is not
11 capable of operating and should be, should be removed.

12 However, Mr. Capestro does say, and in the
13 interest of fairness, that there has been an increase of
14 1500 percent in facilities, of which they don't have the
15 money to pay. That would seem to me that, if there is a
16 1500 percent increase in facilities that the ratepayers
17 are being asked to pay for instead of a stockholders,
18 that the ratepayers, if they are required to pay for it,
19 should become the owners. And that works out to
20 something like 92 and a half percent of the company.
21 That would preclude the company from having to file
22 bankruptcy or being forced into bankruptcy and would
23 leave the stockholders with approximately a 7 to
24 8 percent stake in the company. This is a problem that
25 they created through their own omissions and co-missions

1 and errors.

2 Thank you very much.

3 ALJ RODDA: Thank you, Mr. Gilkey. I will just
4 note for the record and for the benefit of Commissioner
5 Mayes who is on the phone that Commissioner Newman is
6 now here with me on the bench.

7 COM. NEWMAN: Good morning, Commissioner Mayes.

8 ALJ RODDA: You have to use your microphone. I
9 assume she is still there.

10 The next name I have is Sidney Christenson.

11 MR. CHRISTENSON: Hello. I am one of the
12 retired people, C-H-R-I-S-T-E-N-S-O-N, one of the
13 retired people in Vista Del Sol. And I also paid for my
14 lot, paid for my sewer, paid for everything as they
15 stated when we bought it.

16 And a big increase, which this increase in the
17 sewer bill for my 300 cubic feet of water that I put
18 through the sewer in 2009 so far, 400 cubic feet I put
19 through the sewer in 2008, and a couple years I didn't
20 put anything into the sewer, but I paid my bill, my bill
21 is paid, when I called Far West about the year round
22 charge, I was basically told, well, you don't have to
23 pay it but we will put an attachment on your property.
24 So I have been paying it.

25 And I think we have probably gotten some false

1 information from the company, maybe, but I can't see
2 where my sewer bill should far exceed my water and trash
3 bill that I pay to the City of Yuma. I don't see why my
4 sewer bill should cost a lot more than my taxes on my
5 property. I have an RV. Maybe I am supposed to only be
6 paying for an RV instead of paying for a house.
7 However, the people, the Canadians that own these lots,
8 I feel kind of sorry for them with this kind of an
9 increase when their money is down 30 percent or whatever
10 it is at the moment beside.

11 That's all I have to say.

12 ALJ RODDA: Just so I understand, you have an RV
13 that you put on a regular lot?

14 MR. CHRISTENSON: RV lot, Vista Del Sol. It is
15 mobile home or housing. And, also, according to
16 Mr. Shapiro, a lot of this property or these facilities
17 have already been updated. Do you have any pictures of
18 these \$20 million updates that we could show the
19 Commission?

20 Thank you, Judge.

21 ALJ RODDA: Okay. Thank you.

22 Carl Bailey.

23 MR. BAILEY: Your Honor, members of the
24 Commission, thank you for letting me speak. My name is
25 Carl Bailey, C-A-R-L, B-A-I-L-E-Y. My address is 9723

1 East 32nd Lane in Yuma, Arizona.

2 I present to the Commission this morning
3 petitions that we have collected in about a one-month
4 period in The Foothills area. We all recognize that
5 these petitions are not a formal or an official type of
6 document. But we do understand that the Commission can
7 look at these and realize that we have the same
8 frustration and anger and passions as the 800 people
9 that showed up at the 5th March meeting had. And the
10 nice thing about our petitions, we made sure that the
11 names were signed, they were printed, the addresses were
12 printed and the phone numbers are there.

13 And I can take to the Commission that you can
14 pick any one of these petitions out of here at any time
15 and call any one of the people of the 5,000 or all the
16 5,000 to see what their opinion of Far West is.

17 Mr. Capestro talks about he was so shocked at
18 the attitude of the general public because of our, our
19 relationship with the Far West company. Well, all you
20 have to do is read 5,000 of those and you will
21 understand. So I would like to make this position to
22 the Commission at this time.

23 ALJ RODDA: Watch out for that cord. Thank you.

24 MR. BAILEY: I can assure you that these 5,000
25 customers are of the same passion, anger and frustration

1 as the 800 who showed up at the March 5th meeting in
2 Yuma. It is the same group that I am sure motion of you
3 remember.

4 As I read Mr. Capestro's testimony in the Far
5 West rebuttal of the RUCO and Staff recommendation, I
6 thought of all the stories that I had been told by
7 signers of these petitions. And I truly wish, I truly
8 wish that Mr. Capestro and I could sit at a seat at a
9 table in front of this Commission so that I could debate
10 and rebut almost every point that is made about Far
11 West's care, concern, and response to its customers and
12 operations of its company's office and staff.

13 He states on page 3 that there were not a lot of
14 complaints until after the request for the rate
15 increases. And I submit to you these statements.
16 That's the small statement that I just handed to you,
17 Your Honor. And in this little packet there is a
18 statement here from the gentleman called Les Hubble.
19 There is also a statement from a gentleman Harry Burke.
20 If you read those you will find out that we have been
21 fighting Far West since 2003.

22 We had our first meeting with Far West in 2003.
23 And we have had nothing but problems and odors and
24 complaints to Far West since then.

25 Incidentally, I need to let you know that I am

1 in the Vista Del Sol area. And we called for those in
2 2003, a meeting. After putting up with the odor for a
3 few years and not really sure of the time where the --
4 at the time where the odor was coming from, a group of
5 our neighbors who all lived in the subdivision had a
6 meeting in our house -- this is from Mr. Harry Burke --
7 in 2003. In attendance at this meeting was a
8 representative from the Yuma sewer department, a Far
9 West representative and a representative from Jacobson &
10 Company who was the builder of our subdivision. We had
11 about 30 people present. We all wanted to find out
12 where the problem was and where it was coming from.

13 The representative from the City of Yuma sewer
14 department suggested that the smell was coming from the
15 Salton Sea in California, which is about 100 miles away.
16 The representatives from Far West didn't say a single
17 word. Mr. Burke goes on to cite one of the major spills
18 we had there and the hassle we got from Far West to come
19 out and do something about it. We literally had to go
20 through the city and then back to Far West to get that.

21 The petitions that you have, I will reiterate,
22 have names, addresses and phone numbers. This is just a
23 small portion of the problems that we have had with Far
24 West. Those people on those petitions, every one of
25 them, if you will call them, will cite you some kind of

1 a problem.

2 Now, with this small packet in the back of it
3 are two of the petitions that I ran off, copies of those
4 petitions that's in the 5,000 signatures. These two
5 petitions happen to be on 38th Lane and 38th Street.
6 Those are the two streets that are right next to the Far
7 West sewer, or, yes, to the Far West sewer plant, the
8 Palm Shadow plant they refer to. These are really
9 great. You have 30 people here that you could call very
10 quickly and get a real example of just how concerned and
11 how important Far West thought that its customers were.

12 We believe that this attitude of mismanagement,
13 inefficiency and incompetence is the primary source of
14 all of Far West's problems, from its lack of competent
15 engineering, its indebtedness, its poor operation of the
16 company, and of its inability to look towards future
17 problems and needs.

18 Mr. Capestro complained that basically there is
19 not enough money for the company to put itself on a
20 stable financial footing. I would bring to your
21 attention that there are only two people that own Far
22 West, the same two people that own H&S development, who
23 owns hundreds of acres of residential lots of which
24 thousands are being sold now, developed and sold by
25 Arizona Land Sales, who is owned by the same two people

1 that own Far West. These people almost all -- own
2 almost all the land on Foothills Boulevard and many of
3 the businesses. And a casual surf through the internet
4 will link these same two people to racehorse ranches in
5 Tennessee and Kentucky, cattle ranches in Washington,
6 Oregon and Texas. And let's not forget the three golf
7 courses that they own in The Foothills area that buy
8 their irrigation effluent water from Far West.

9 Now, some circles would call that a conflict of
10 interest. Others would call that good old American
11 capitalism. I would say that a good forensic accounting
12 investigation be conducted before buying the story that
13 Far West is broke.

14 Back in the late '70s and early '80s, this
15 nation was in a recession. The building industry had
16 gone flat. And in the state of Oregon, where I happen
17 to reside at, my business was going flat, too. Our
18 unemployment was at the 15 percent mark. Almost every
19 logging mill in the Pacific Northwest had been closed
20 down and people were walking away from their homes and
21 leaving the keys on the doorstep just like is happening
22 today. My business was about to collapse. I went down
23 to the bank and refinanced my home so I could put it
24 back in my business and make it a success. And I would
25 like you to know eventually it was a success.

1 Mr. Capestro complains that it was the rapid
2 growth in The Foothills area and demand for water/sewer
3 services that outstripped their ability by 1500 percent.
4 But yet in 1998 they said they had 5500 customers and
5 today they claim 7200 customers. And I don't see where
6 the 1500 percent comes in there.

7 He neglects to explain that it was Arizona Land
8 Sales and H&S development that caused the growth and
9 profited by it, ergo, the two people who own Far West
10 also own H&S development, who owns Arizona Land Sales,
11 made a lot of money and are still making a lot of money.
12 But they want their customers to have to pay for all of
13 their indebtedness and have the highest sewer rates in
14 the entire United States. And that, I believe, is only
15 the start.

16 If you look at Mr. Capestro's testimony, he is
17 already talking about the water company not having
18 enough money for next year. I can see a rate increase
19 being put in there, too.

20 It goes without saying that a truly deep
21 forensic accounting investigation is necessary. Like
22 the old professor, accounting professor said years ago,
23 there are liars, there are damn liars, there are
24 accountants and there are statisticians.

25 Mr. Capestro continually points out that Far

1 West has no money, it can't borrow any money. In fact,
2 Far West is in the same condition that approximately
3 75 percent of its customers are in. I guess we should
4 say welcome to the club.

5 But I will bet that out there somewhere there
6 are either TPA funds, there are agriculture funds, there
7 are stimulus funds, there are bailout funds, there is
8 some kind of funds somewhere in our governmental system
9 that will help Far West gets itself back on a firm basis
10 without climbing on the backs of its consumers and
11 customers.

12 Mr. Capestro thinks that RUCO and Staff have
13 their heads in the sand, quote. I personally think that
14 Far West has had its head in the sand. Mr. Capestro
15 says on page 1 and 2 it appears to me that that is
16 where -- I won't read that because it is a long thing
17 that Mr. Capestro does, but the bottom line is he runs
18 the company. He might say he is a de facto and he might
19 say he doesn't have any, but the fact is he runs the
20 company and that's where I think the head in the sand
21 is. I personally believe the Marks brothers might do a
22 better job at Far West.

23 In conclusion -- well, I will have it here in
24 just a moment. In conclusion, we believe that Far West
25 is mismanaged, incompetent, and insufficient. We

1 believe that it has the infrastructure, the wherewithal,
2 and the ability to find its financing somewhere other
3 than the backs of the customers. And I further believe
4 that until they get themselves on solid, sound footage
5 and bring to the customers a viable DEQ approved
6 product, and until that happens, they should not be
7 allowed any, any type of an increase in rates.

8 What we most desire, what we most desire is that
9 this Commission would rescind the CC&Ns of Far West and
10 turn this company over to the Yuma city municipality.

11 Thank you very much. I appreciate you letting
12 me rant and rave.

13 ALJ RODDA: Thank you, Mr. Bailey.

14 The next name I have is Wally Starz.

15 MR. STARZ: Already been covered.

16 ALJ RODDA: Already been covered, okay. Thank
17 you, Mr. Starz.

18 All right. I have some forms here for people
19 that had indicated that they did not wish to speak, but
20 I am just going to read them so they are on the record.
21 And then, Colette, I will give you them.

22 Lawrence Unger, Charles, Charles F. McDade, Flo
23 McDade, Arthur Prevost -- oh, we already covered him --
24 Victor Bieleny.

25 MR. BIELENY: Bieleny.

1 ALJ RODDA: Sorry.

2 And Judy Starz.

3 Was there anyone else who wished to make public
4 comment this morning?

5 (No response.)

6 ALJ RODDA: All right. Well, I appreciate
7 everyone making the journey up from Yuma. As I said
8 down in Yuma, we came there so you wouldn't have to come
9 up here. But I appreciate the updates. I know what
10 that means to your lives and I know what it means to
11 your dedication to this cause.

12 With that, I am going to take an approximate
13 ten-minute break and then we will start with --

14 MR. SHAPIRO: Can we make it 15 so we can talk
15 about the different witness?

16 ALJ RODDA: Yes, make it 15. And then we will
17 start with opening statements.

18 (A recess ensued from 11:05 a.m. to 11:30 a.m.)

19 ALJ RODDA: Let's go back on the record. And I
20 think during the break, Mr. Shapiro, you and Ms. Wood
21 were going to talk about this ADEQ witness. And maybe
22 you can let me know.

23 MR. SHAPIRO: Judge Rodda, we did discuss the
24 situation. The company, as much as it pains us, feels
25 that we are not in a position to have Ms. Campbell from

1 ADEQ called in this proceeding tomorrow. We ask that
2 RUCO be directed to prefile her testimony so that we can
3 prepare accordingly. And we are likely to take her
4 deposition prior to coming back to hearing.

5 This is a bit of an unusual situation, but the
6 company has ongoing issues, compliance matters, and
7 litigation with ADEQ and we simply do not want to be put
8 in a position of being prejudiced by having a witness
9 testify that we have no opportunity to prepare for.

10 ALJ RODDA: And, Ms. Wood, do you have a
11 response or objection to that or can we get them? We
12 can go through all the witnesses we have today and then
13 have additional --

14 MS. WOOD: I just wanted to point out something.
15 The Commissioners are interested in talking to the ADEQ
16 representatives, the same as they were in Johnson
17 Utilities that was recently at issue.

18 The other point is that the ADEQ member is not a
19 willing witness. We had to subpoena them in. And the
20 reason we are subpoenaing them is to get a status on the
21 APP permits, and specifically on update on Section 14
22 and Palm Shadows as to what the status of those
23 operations are in terms of their compliance actions. So
24 I don't think there is any undue surprise there. If
25 there is anybody in the room that should be aware of

1 what that status should be, the owners. So we just
2 wanted confirming information from DEQ.

3 And we were -- we did discuss the scope of this
4 hearing. And at the -- we had a pretrial conference
5 where I pointed out RUCO isn't being afforded an
6 opportunity to file surrebuttal and we would like the
7 opportunity to have some input. And what we were told
8 was we would have the opportunity to put our witnesses
9 on the stand.

10 Now, I understand the sentiment this is an undue
11 surprise. Well, if you say everything that we are
12 spending is to comply with the ADEQ order and you raise
13 that beef, then we have the right to countermand that.
14 And if the person who makes that statement is
15 Mr. Capestro, who we first learned was going to testify
16 last Wednesday morning because I didn't have the
17 testimony before I left on Tuesday, I think we have a
18 right to countermand that.

19 ALJ RODDA: I am not --

20 MS. WOOD: I am just suggesting we allow her to
21 testify because they are not a friendly witness, they
22 are not going to, you know, participate in prefiled
23 testimony. That's not the nature of our relationship
24 with DEQ. We are subpoenaing them in. So I think we
25 just let her testify and, if there is testimony the

1 company needs to prepare rejoinder, if it were, then let
2 them do that.

3 ALJ RODDA: Well, that's interesting. I mean,
4 so it is your position -- I am not saying that it is not
5 an appropriate witness. It is just the nature of the
6 emergency case and how quickly it is, you know, it is
7 usually processed.

8 So, all right, are you saying that they would
9 not provide the information that they would testify to
10 updates on permits or whatever without --

11 MS. WOOD: Without being --

12 ALJ RODDA: I mean they wouldn't supply that in
13 writing?

14 MS. WOOD: Believe me, I tried. They said they
15 have a parallel proceeding and the only way they are
16 coming is if they get a subpoena and they will appear in
17 person. And that's what they said.

18 And I think, you know, they are in a
19 corresponding position, you know, with the company. And
20 they both have their sentiments. All I want is the
21 information from them. So, you know, after that
22 process, whatever we need to do to afford the company an
23 opportunity to deal with it, through rejoinder, the
24 witness will be available for cross-examination, we can
25 do that. And if they need additional time to provide

1 rejoinder for a witness who would then be available for
2 cross-examination, that would be fair to us. That's
3 certainly fine. But the notion they are going to be
4 submitting written testimony voluntarily through RUCO
5 is -- I don't think that's going to happen.

6 ALJ RODDA: So this matter, what I am hearing
7 from both of you, is complicated because there is a
8 parallel or this other ADEQ proceeding that's, I guess,
9 ongoing.

10 MR. SHAPIRO: Well, not only is it ongoing,
11 Judge Rodda, but the very information Ms. Wood seeks to
12 elicit from this witness is subject to dispute.

13 What I didn't hear in here is any prejudice to
14 RUCO by delaying this witness. We are the party that's
15 prejudiced by the delay. We feel that the need to
16 prepare for this witness outweighs that prejudice. It
17 is unfortunate, but it is a choice we don't have to
18 make. Now, if you can't prefile testimony, then I guess
19 we will take her deposition. But I have been practicing
20 for 17 years before this Commission, I have never seen a
21 witness called except after a case in chief as a true
22 rebuttal witness, which is our prerogative, without
23 something prefiled and opportunity to prepare. We are
24 simply saying we want to prepare before she takes the
25 stand. I don't even have my engineer witness here.

1 MS. WOOD: Just for the record, Your Honor, we
2 had three days to prepare for Mr. Capestro. So I don't
3 care how many days you give them to respond to
4 Ms. Campbell, who I have advised them the person and
5 name of the person who is going to testify. I am
6 perfectly fine with that. But I don't see the harm to
7 the company in having the person testify tomorrow,
8 because it took an arm and leg to get them here to come
9 and answer, and because we anticipated the Commissioners
10 would have questions for them. And, if anything, you
11 are providing an unfair advantage to the company by
12 allowing her to testify and giving them ample time to
13 either file rejoinder or do something more. There is
14 nothing wrong with that.

15 ALJ RODDA: Facts are what facts are. I don't
16 know it is an advantage. There is certainly a
17 disadvantage of not knowing. It is unusual that, I
18 guess, just the nature of this thing, we don't have an
19 outstanding data request that says what are your
20 witnesses. But I guess that's not done.

21 MR. SHAPIRO: We typically don't do it because
22 we prefile testimony.

23 But, again, we are harmed. I am not even in a
24 position to determine appropriate objections because I
25 don't know the substance of the testimony. And

1 unfortunately, Judge Rodda, I am going to have to be on
2 my A game given the fact that there are parallel
3 proceedings and compliance issues. This simply puts the
4 company at prejudice not only in this proceeding but
5 elsewhere. And I don't see the harm in delaying
6 Ms. Campbell until we are prepared. We will move as
7 quickly as we possibly can.

8 ALJ RODDA: So why couldn't we get her at a
9 subsequent -- well, even if we couldn't get her to file
10 written testimony, could we subpoena her for a
11 subsequent date, not tomorrow? Is she from Phoenix?

12 MS. WOOD: She is driving down from Phoenix
13 tomorrow and is prepared to testify tomorrow. It took
14 me great efforts to find a person who knew something
15 about the status of this DEQ order and could testify.

16 I don't see the harm to the respondent if their
17 ability to cross-examine is delayed. I mean I can do
18 what you want me to do but the fact of the matter is she
19 is not going to participate in writing.

20 ALJ RODDA: I am just trying to find out if
21 tomorrow is the best time or if some other time up in
22 Phoenix is better.

23 MR. SHAPIRO: Judge Rodda, we will schedule her
24 deposition as soon as we can work out a date. If we are
25 not going to have prefiled testimony, then we will take

1 her deposition. We will determine within 48 hours
2 whether we want to provide a responsive witness and we
3 will prefile their testimony rapidly. So we will move
4 with it expeditiously to solve this issue.

5 ALJ RODDA: Okay. Let me take this under
6 advisement and I will let you know later today. But
7 let's get started. Thanks for the challenges, you guys.

8 Mr. Shapiro, do you have an opening statement
9 this morning?

10 MR. SHAPIRO: I do, Judge Rodda.

11 ALJ RODDA: Just before you get started, I will
12 just note Commissioner Mayes had been called away
13 earlier to some legislative meeting so she is not
14 currently on the phone.

15 MR. SHAPIRO: Well, you wanted a challenging
16 case, I guess, and you got one. This is an emergency
17 rate case, and those are always challenging. But as the
18 evidence we will present to this Commission shows, Far
19 West Water & Sewer Company is suffering hardship due to
20 a sudden change.

21 Since the last rate case was decided in
22 February of 2007, this company has experienced a more
23 than 1500 percent increase in plant investment in its
24 sewer division. The rate base in the last case was
25 roughly \$1.5 million. To this rate base Far West has

1 already added more than \$2 million and they need another
2 four and a half million dollars to finish this project.
3 Imagine the impact, if you will, on APS or Southwest Gas
4 if one of those utilities was required to increase its
5 investment in plant by 1500 percent in two years. Would
6 that really not be considered a sudden change?

7 As a result of all this investment in plant, the
8 company is paying monthly debt service on \$25 million of
9 IAD bonds. This amounts to \$2.9 million annually or
10 roughly \$160,000 each month. And this does not take
11 into account the need to fund and retain a debt service
12 reserve account. \$40,000 a month has to be put in that
13 account until December of 2009.

14 The company's rates for sewer service today do
15 not take any of this debt into account yet the company
16 has been making these monthly payments since January of
17 2008. Now Far West cannot pay its debts as they come
18 due in the usual course of business. The company
19 already has on its books \$3.4 million of accounts
20 payable. Some of these creditors are the contractors
21 that had built and installed the new plant. Far West
22 needs them to finish the installation and bring the new
23 plant on line. But these contractors want to be paid.
24 They are owed \$3 million already and it will take
25 another \$1.5 million on top of that to finish the

1 projects.

2 Far West's ability to maintain service is in
3 serious doubt. Again, the company can't pay its debts.
4 It already owes more than \$3.4 million. They can't
5 finish the sewer improvement that ADEQ ordered as
6 necessary to bring the system into compliance. They
7 can't begin to make needed improvements to the water
8 system, improvements already delayed due to the
9 company's financial position. And this water system has
10 over 15,000 customers, half of which do not receive
11 sewer service from Far West because their subdivisions
12 were built years ago using septic.

13 The focus of this emergency rate case therefore
14 is cash flow. And we believe that the critical exhibit
15 is Bourassa rebuttal Exhibit 2, the actual and projected
16 statements of cash flow. This is a company-wide exhibit
17 that illustrates the company's rapidly deteriorating
18 financial condition.

19 On a company-wide basis Far West had a positive
20 cash flow in 2007 of \$171,000. That's the test year in
21 the pending but stayed permanent rate case. In 2008,
22 Far West had a positive cash flow of 13,000. Their
23 projected cash flow for 2009 is a negative \$6.4 million,
24 allow me to repeat that, a negative cash flow projected
25 for 2009 of \$6.4 million. We provided this document to

1 Staff and RUCO in response to data requests. Mr. Rigsby
2 even attached the document to his testimony. But both
3 Staff and RUCO have ignored this evidence.

4 Common sense begs the question, how can this
5 utility with negative cash flow of \$6.4 million not be
6 suffering hardship and how can its ability to maintain
7 service not be in doubt? How can the company pay its
8 bills? Right now it can't pay the contractors for a new
9 sewer plant already built due to millions of dollars of
10 cost overruns, roughly \$3 million already. It cannot
11 pay the rest of the cost to finish the improvement ADEQ
12 requires, again 1.5 million. It cannot fully or timely
13 pay the district that sells the company water, can't pay
14 its property taxes, all of which begs the second
15 question, how long until the company cannot pay the rest
16 of its bills? It has got to pay salaries and wages,
17 otherwise who is going to operate this system? Got to
18 pay power costs, otherwise how will they operate this
19 system? It has to pay for chemical testing and
20 treatment and they have to pay to haul away effluent.
21 How will they pay the ratepayers' health and welfare if
22 they can't pay the expenses? They have to pay debt
23 service on the IDA bonds, otherwise they will be in
24 default.

25 So why are RUCO and Staff so opposed to

1 emergency rate relief here? Why are they willing to
2 play with fire and risk harm to over 15,000 water and
3 over 7,000 sewer customers? Why are Staff and RUCO
4 using their so-called company-wide approach to obscure
5 the problem arising from of the sewer company division
6 and threatening the company as a whole?

7 Is it simply Staff and RUCO's goal to delay rate
8 relief as long as possible? Well, that's certainly
9 RUCO's goal. They don't even bother to hide the fact.
10 They want this case delayed. They don't want any rate
11 relief whatsoever until two years after the company
12 completes the ADEQ ordered system improvement. That two
13 years is one year to operate this plant and roughly, we
14 estimate, a year to complete the rate case. But these
15 are the same improvements that are breaking the
16 company's back in the first place and they cannot afford
17 to finish.

18 Does Staff and RUCO really believe that Far West
19 has sufficient cash flow to meet its obligation this
20 year and until the Commission can finish the permanent
21 rate case? They may believe that but the evidence will
22 show that RUCO's cash flow analysis is flawed and
23 ignores critical evidence and that RUCO cannot
24 adequately dispute the picture illustrated by
25 Mr. Bourassa. Staff certainly appears to know that the

1 company needs more cash flow and Staff has offered the
2 Commission a number if the Commission wants to grant
3 emergency rate relief. Staff clearly prefers that the
4 Commission make the hard decisions to protect the public
5 interest. Okay, that's the Commission's job. It would
6 be nice if Staff would see the harm the company and
7 customers face and affirmatively help the Commission,
8 but, instead, they chose to put their head in the sand.

9 Maybe Staff and RUCO are simply hearing the cry
10 of the customers against the requested emergency and
11 permanent rate relief. Well, the customers rarely want
12 to pay higher rates so opposition does not come as a
13 surprise. But what Staff and RUCO really should ask
14 themselves is what will the cry from the customers be
15 like if the Commission listens to them and they are
16 wrong and service is severely compromised?

17 Sometimes, we respectfully suggest, it is the
18 job of regulation to protect consumers from something
19 besides just higher rates. And sometimes increased
20 revenues are not only appropriate but necessary to
21 protect ratepayers by preserving the utility's financial
22 health.

23 Maybe it is that Staff and RUCO are afraid that
24 the granted rate relief will be some sort of watershed
25 event leading to a multitude of emergency rate filings.

1 This is clearly RUCO's view. RUCO accuses Far West of
2 attempting to redefine the regulatory paradigm in
3 Arizona. I think Mr. Capestro summed up the company's
4 response to this accusation well in his testimony. The
5 company does not have the luxury of considering
6 Arizona's regulated utility industry. The company is
7 worried about staying afloat, continuing service,
8 finishing over \$20 million of improvements ADEQ has
9 ordered, and getting started on another \$20 million of
10 improvements that the water system desperately needs.
11 Besides, in Far West's paradigm, emergency rate relief
12 has already been found appropriate by the Commission in
13 circumstances similar although not as dire as we face
14 today. Or maybe RUCO thinks it is Far West's counsel
15 that is trying to redefine the regulatory paradigm.

16 We do represent a large number of water and
17 sewer companies before this Commission. Mr. James and I
18 are counsel of record. We have 45 years of combined
19 experience. We have filed a total of three emergency
20 rate cases in all that time, this one, the last one for
21 Far West in which emergency rate relief was granted, and
22 one for Pine Water Company when they needed a surcharge
23 to cover the cost of hauling.

24 Of course, we can't really know for sure what
25 RUCO is afraid of. But really all the Commission has to

1 do is follow the law in Arizona, which is clear.
2 Interim rates may be approved when this is either an
3 emergency or when rate relief has been unreasonably
4 delayed. This is an emergency. This is not a situation
5 where the utility just doesn't want to wait for new
6 rates because the Commission has delayed things. This
7 case is not going to be a precedent for interim rate
8 relief absent an emergency. And Far West cannot wait
9 for new rates because it is projected to come up more
10 than \$6 million short in 2009 and it is not able to pay
11 its bills and it can't finish the ADEQ mandated
12 improvements.

13 Now, the emergency rate relief that we are
14 seeking is very reasonable under the circumstances. We
15 are not trying to earn a return on and of any investment
16 of plant. The rate increase we have requested results
17 in zero operating income. It actually provides less
18 than half the amount requested in the pending but stayed
19 and permanent rate case. It provides less than one
20 third of the projected 2009 cash flow shortage. But Far
21 West has suggested and it believes that if the
22 Commission acts quickly that the relief sought would
23 provide sufficient additional cash flows to improve the
24 financial picture enough to allow it to secure the
25 additional financing it needs to finish paying for the

1 required sewer system improvements.

2 In other words, Judge Rodda and Commissioners,
3 the request for emergency rate relief is a step on the
4 road, a long road where the company builds the plant it
5 is required to build to serve the growth it has already
6 experienced over the last decade. On that way, Far West
7 has already finished one rate case for the sewer
8 division, entered into two different consent orders with
9 ADEQ, sought and obtained financing approval from the
10 Commission to borrow \$25 million, filed another sewer
11 division rate case, which it was ordered to do by the
12 Commission. And in that case, they seek substantial
13 rate increases but they proposed a three-year phase-in.
14 This is just a preliminary step, one that precedes the
15 phasing in of new rates following a 1500 percent
16 increase in plant and one that is necessary to give Far
17 West Water & Sewer company a chance to finish the
18 required sewer improvements and to maintain water and
19 sewer service until permanent rate relief can be
20 authorized.

21 Thank you.

22 ALJ RODDA: Thank you, Mr. Shapiro.

23 Ms. Wood.

24 MS. WOOD: Yes, Your Honor. Good morning, Judge
25 Rodda, Commissioner Newman. My name is Michelle Wood.

1 I am appearing here on behalf of RUCO.

2 Far West Water & Sewer Company seeks a
3 101 percent rate increase of sewer customers' rates via
4 interim rates subject to refund. The primary issue is
5 whether the company has an emergency which necessitates
6 interim relief.

7 In its application, the company did not assert
8 that it is insolvent or filing bankruptcy. In its
9 application the company did not allege a sudden change
10 bringing hardship. That was a recent development
11 through the testimony of Mr. Bourassa and Mr. Capestro
12 as of last Tuesday night. The company alleged, and I
13 quote, in its original application, interim rates sought
14 herein would appreciably improve the company's financial
15 condition.

16 While I am sure a 101 percent increase in
17 revenue would appreciably improve the financial
18 condition of every utility in Arizona, it is not the
19 standard by which the Commission grants emergency rates.

20 The company alleges a deteriorating financial
21 condition. On its face, the application itself does not
22 meet the standard for imposition of interim rates. As
23 set forth in the AG opinion in the Rio Verde case, to
24 obtain emergency relief the company must demonstrate
25 that it experienced a sudden change causing hardship, it

1 is insolvent or filing bankruptcy, or that its financial
2 condition is such that it is unable to maintain service.

3 There are several issues in this dispute and, as
4 I previously mentioned, the primary question is whether
5 the company has an emergency in seeking a rate increase
6 of 101 percent. And the answer is an unequivocal no.

7 Although the company asserts the cash flows of
8 its sewer division are insufficient to meet debt service
9 on its \$25 million Industrial Development Authority
10 bonds, RUCO's financial analysis of the issues do not
11 support the conclusion. Mr. Rigsby will testify that
12 the company's financial condition is better now than it
13 was at the time the Commission approved the financing of
14 the IDA bonds.

15 Although the company did not allege a sudden
16 change causing hardship in its application, the
17 company's witness, Thomas Bourassa, provides testimony
18 in rebuttal alleging that the company has experienced a
19 sudden hardship because ADEQ requires compliance with a
20 2006 decision.

21 There is nothing sudden about the ADEQ's seeking
22 compliance with a 2006 order in 2009. Therefore the
23 company has not demonstrated a sudden change causing
24 hardship.

25 The second issue concerns the methodology used

1 to evaluate the company's financial status. Initially
2 both RUCO and the company evaluated the company's
3 financial condition using a debt service coverage
4 approach. The debt service coverage approach uses debt
5 service coverage, or DSC, ratios and times interest
6 earned ratios, or TIER. In direct testimony the company
7 agreed to the debt service coverage approach but
8 asserted that the analysis should be based upon or
9 restricted to the cash flow and debt service of the
10 sewer division alone.

11 In rebuttal, however, the company makes the
12 sudden departure and asserts that the use of DSC and
13 TIER ratios is not appropriate. The company instead
14 uses liquidity ratios such as current and asset test
15 ratios.

16 RUCO's analysis using DSC and TIER ratios is
17 entirely consistent with the Staff's analysis in the
18 financing application in Docket 07-0442, which the
19 financing was approved, and the Staff's current analysis
20 of the matter.

21 DSC and TIER ratios rely on the company's income
22 statement which reports income and expenses related to
23 regulatory utility activity. The company's analysis
24 using current and asset test ratios is flawed because
25 the analysis is based upon the comparison of assets and

1 liabilities without excluding nonregulatory liabilities
2 such as restitution, fines and penalties. Restitution,
3 fines and penalties were imposed on the company as a
4 result of its failure to properly train staff, resulting
5 in death and injury. As Commissioner Mayes pointed out
6 in public comment, payments for restitution, fines and
7 penalties are ordinarily considered nonregulatory
8 liabilities by the Commission. RUCO's approach is
9 consistent with the analysis historically applied by the
10 Commission and excludes consideration of nonregulatory
11 income and expenses.

12 The next issue is whether the Commission should
13 consider the financial strength of the total company in
14 determining whether to grant interim rates. The company
15 asserts that it is unfair to have a water division
16 subsidize the sewer division. And ordinarily RUCO would
17 concur, but these circumstances are different.

18 The company applied for and received approval to
19 incur debt on the financial strength of the total
20 company. The decision cannot be undone. Accordingly,
21 RUCO submits that the company's ability to meet debt
22 service should be evaluated on a company-wide basis.

23 Third, the company and RUCO also disagree on the
24 treatment of the below-the-line income and expenses. At
25 issue is the treatment of the company's payment of

1 500,000 a year to haul effluent from Palm Shadows
2 wastewater treatment plant to the City of Yuma for
3 treatment. The company's accountant treats the expense
4 as a below-the-line expense in his 2007 and 2008
5 compilations. Even though the company's accountant
6 considers the expense an extraordinary below-the-line
7 expense, Mr. Bourassa recategorized the expense as an
8 above-the-line miscellaneous expense. RUCO asserts that
9 the expense should not be considered in computing cash
10 flows.

11 RUCO also submits the expense rises from the
12 company's construction of a percolation and evaporation
13 pond on nonpercolating clay soil and its failure to
14 properly treat the effluent necessitated retreatment by
15 the City of Yuma. As such, RUCO asserts that the
16 expense should be considered a below-the-line expense
17 and exclude it from consideration in calculating cash
18 flows because it is not the ratepayers' fault these
19 circumstances exist.

20 Fourth is whether the company has sufficient
21 cash flow to meet its debt service. The way to measure
22 sufficiency of cash flows is through the evaluation of
23 debt service coverage and times interest earned ratios.
24 The company's DSC and TIER levels indicate that the
25 company has sufficient cash flow to cover its

1 debt service. In fact, the company's position has
2 improved since the Commission approved its financing
3 application 18 months ago. If the company's cash flows
4 are sufficient to meet debt service, there is no need
5 for interim rates.

6 The fifth issue is whether and to what extent
7 increased wages and salaries should be considered in the
8 interim rate. The company's list of expenses includes
9 195,000 in increased wages and salaries, 25,000 each to
10 its executive officers, Ms. Braden and Mrs. Capestro.
11 RUCO asserts that the increased wages and salaries
12 should not be considered in determining interim rates,
13 rather, this should be analyzed fully in the company's
14 pending permanent rate case application proceeding.

15 Next is the question whether current ratepayers
16 should have to pay interim rates to pay debt service on
17 improvements intended for future development. A certain
18 portion of the IDA bonds have been spent for expanding
19 facilities for future development. The expansion
20 benefits an affiliated land development company but not
21 the current ratepayers of Far West.

22 RUCO has had an insufficient time to fully
23 evaluate the company's expenditures on sewer
24 infrastructure for expansion. RUCO reserves the right
25 to fully develop the issues in the permanent rate case

1 and wishes to document for the record that the company
2 and Staff have agreed to the same in a conference on
3 March 19th, 2009. However, from its limited review,
4 RUCO has determined the company spent \$420,000 to
5 engineer and the expansion of Section 14 wastewater
6 treatment plant from 1.3 million gallons per day to
7 2.0 million gallons per day. The company says the total
8 cost of the expansion to 2.0 million gallons per days
9 exceeds \$4.2 million.

10 To the extent funds have been expended to cover
11 the expansion, current ratepayers should not have to
12 cover the cost of expanding the plant for the benefit of
13 future ratepayers, especially when a good portion of
14 them are affiliated with the land development company.

15 Moreover, the company's engineer indicates the
16 project has been expanded to include the design of low
17 pressure sewer systems for two new subdivisions. The
18 cost of these low pressure systems and the \$4.2 million
19 plus expansion should fall on the future ratepayers, not
20 current ratepayers. In addition, the company has spent
21 4 million to retire a long-term loan with the Water
22 Infrastructure Financing Authority.

23 Next is the issue of sharing of risk associated
24 with the improvement and expansion of the company's
25 plant. In public comment today you heard a great deal

1 about this. Company records reflect that 918,000 in
2 payments to affiliated entities occurred between 2007
3 and 2008, and unpaid effluent fees from the company's
4 golf courses apparently in excess of 250,000.

5 While the principals and shareholders of the
6 company benefit from the payment of accounts payable to
7 their affiliated companies and nonpayment of accounts by
8 their golf courses, their equity infusion is negligible.
9 If the company has experienced the extent of cash flow
10 difficulty outlined by its witnesses, RUCO suggests it
11 is either time to rework the obligations or expect cash
12 infusion from shareholders.

13 Finally, and perhaps most importantly of all, is
14 the fact that not all of the wastewater treatment plant
15 funded by the IDA bond issuance is, are presently
16 providing service to Far West customers. According to
17 the company, only one of the three facilities is
18 completed. And this yet has not been verified by ACC
19 Staff engineers. And, in fact, the company is seeking
20 emergency rates for construction work in progress which
21 fails the used and useful standard.

22 Customers are being asked to pay for plant that
23 they do not receive any current benefit for. This is a
24 main reason that RUCO has requested the permanent rate
25 case be delayed until a full 12 months of operating

1 costs on the new plant can be analyzed given the
2 magnitude of the requested permanent rate increase.
3 RUCO hopes the Commission concurs.

4 In summary, RUCO asserts that the company's
5 request for interim rates should be denied because the
6 three-year-old ADEQ order does not constitute a sudden
7 change and is therefore not an emergency. Moreover,
8 that was not alleged in the application. Two, likewise,
9 a deteriorating financial condition alone does not
10 constitute an emergency. Third, the company's cash
11 flows are sufficient to meet debt service, and, in fact,
12 the company is in a better position than what it booked
13 here with the financing authority. And, last, current
14 ratepayers should not have to pay for interim rates to
15 compensate for the cost of expansion for future
16 development or increases in wages and salaries.

17 And thank you very much.

18 ALJ RODDA: Before we go to you, Mr. Torrey, let
19 me ask Staff and RUCO this, because it is, as I am
20 learning more as you are telling me, our original
21 schedule for filing of testimony was modified somewhat
22 because of data requests or whatever reason.

23 Ms. Wood, do you think, did you have adequate
24 time, did you have adequate time to prepare after the
25 filing of the rebuttal testimony?

1 MS. WOOD: After many late nights and working
2 the weekend, I think we are prepared to go forward.

3 ALJ RODDA: Okay.

4 MS. WOOD: But it was not an easy feat.

5 ALJ RODDA: Okay. And, Mr. Torrey or
6 Ms. Mitchell, whoever was actively involved in that
7 part, do you feel after filing the rebuttal that you had
8 adequate time to prepare for today?

9 MS. MITCHELL: You know, it was tight, I will
10 admit that. And, too, Staff was late in its filings as
11 well. And, you know, I don't need to rehash the, you
12 know, burden that Staff carries with the numerous case
13 loads that we have. But, you know, we got it done as we
14 always do.

15 ALJ RODDA: Okay. So what I am hearing is that
16 you think you are adequately prepared to go forward
17 today? Is that what I am hearing? And because we have
18 this other issue of this, another witness and which may
19 or may not, we are probably going to have another day
20 somewhere in the future, so I was just curious about
21 whether going forward today is the best thing, I mean if
22 we have to come back anyway.

23 MS. MITCHELL: Well, you know, that's, that's
24 not an easy question to answer. And I will tell you
25 why.

1 The company alleged that it has an emergency,
2 which we have had delay after delay. So which one is
3 it? I mean when we first started this process, the
4 first procedural conference that we had, you know, Staff
5 put this case on a fast track in order to accommodate
6 the company and accommodate you in preparing a
7 recommended opinion and order to make an earlier open
8 meeting, you know, should the Commission decide to grant
9 the interim rates. And now we are at a crossroads
10 where, you know, now we are looking at delaying again,
11 which is not to I tell you, which is to the company's
12 detriment and actually not to Staff.

13 I mean we could, we could always use additional
14 time to analyze submittals by the company. Mr. Becker
15 just finished being the main witness in Arizona
16 American, and here he is, you know, today. So I will
17 say that we could use more time. I believe Mr. Becker,
18 to his credit, is prepared and is ready to testify, you
19 know, on behalf of Staff.

20 This has just been an unusual unfolding of
21 circumstances, I think, for this case.

22 ALJ RODDA: There is a lot of factors that have
23 added on because usually we do process emergencies as
24 quickly as we can.

25 Mr. Shapiro, I mean sounds like you are prepared

1 to go forward.

2 MS. MITCHELL: You know, we are prepared if you
3 are ready for us to go. But to be candid, certainly we
4 could use more time.

5 It was a surprise to us about the ADEQ witness.
6 And, while we don't exactly have the same fight that the
7 company has, I mean Staff's position is that if there is
8 information that will assist the Commission in making an
9 informed and reasoned decision, then Staff is all for
10 the presentation of that information. So our issues
11 with the ADEQ are not the same as the company. We would
12 like to be more prepared on that issue. We really
13 aren't prepared to do a full blown discussion with the
14 company's status with ADEQ, but, you know, it is Staff's
15 role to assist the Commission and certainly we think
16 that testimony may --

17 ALJ RODDA: Well, if there were issues raised in
18 the rebuttal testimony that require additional data
19 requests, that's what I am -- because of the timing,
20 there probably -- I don't know. Was there time to do
21 any data requests? Probably not.

22 MS. WOOD: No. And the allegation that we had a
23 sudden change that necessitated was the reason we pulled
24 in ADEQ or asked them or subpoenaed them. So, and we
25 subpoenaed them Friday late afternoon. I mean it wasn't

1 like it was an easy thing to do. They have, you know,
2 they have the same issues. But what necessitated it was
3 the allegation we have a sudden change that necessitates
4 this emergency, and that is not in the complaint, the
5 initial application. And although it is their word, we
6 are adjusting as best we can. I don't think there is
7 anything preventing us from going forward today and
8 hearing from Staff, excuse me, I guess it would be the
9 company first and then proceeding on as far as we can
10 and deal with the other issues as we can.

11 ALJ RODDA: Mr. Shapiro, did you have any
12 comments?

13 MR. SHAPIRO: I guess I would just note for the
14 record that, with the exception to Mr. Capestro's
15 response to public comment and complaints, everything in
16 our rebuttal filing is in direct response to the
17 positions taken by Staff and RUCO. If somebody feels
18 otherwise, they are certainly welcome to point us to
19 where it was. We completed that filing within a week
20 due to the delays that we experienced.

21 And throughout the discovery process, as we were
22 processing data requests, we repeatedly told Staff and
23 RUCO if they feel they need more time and they feel the
24 hearing date needs to be pushed back, they just have to
25 say so. We accepted responsibility for the delay in

1 processing data requests. The company has a lot on its
2 plate. So nobody stepped up and said we need to push
3 the hearing back. Everybody knew of the dates.

4 We are going to have to come back, but I would
5 join in saying we should get as far as we can now unless
6 you, Judge Rodda, feel hampered in your analysis.

7 ALJ RODDA: No, okay, because it was just
8 something I raised. It wasn't the parties. But
9 sometimes it is hard to be the one saying that we think
10 it should be -- you haven't been shy to date, Ms. Woods,
11 of raising your issues.

12 So I think we can proceed today and see how it
13 folds out, unless anybody has any thoughts.

14 Mr. Torrey, do you have an opening?

15 My thought is we will finish with Staff's
16 opening and then we will take a lunch break and start
17 with the company's witness.

18 MR. TORREY: Thank you, Your Honor. Your Honor,
19 the advantage of going last is just about everything has
20 been said already. But I will try to limit my rehashing
21 of what has been said.

22 Essentially, yes, this is an emergency rate
23 case. And the Commission is being asked to decide
24 whether there really is an emergency in effect that
25 requires rates to be raised on an interim basis.

1 Staff's position has been the scope of this
2 hearing is very limited primarily to financial issues,
3 as to whether or not this company is able to maintain
4 itself financially during the pendency of a permanent
5 rate case which it already filed. Staff just doesn't
6 see it as an emergency.

7 There was a comment made earlier about Staff
8 taking the whole company approach. And that's a fact.
9 Staff does take a look at the entire company in this
10 matter. And the reason for that is it was the entire
11 company that took on the debt to begin with.

12 There was some mention in some of the prefiled
13 testimony from the company itself that if the rates
14 weren't approved that there would be a risk to the
15 service of not just the sewer customers but the water
16 customers as well. And if that's the case, then
17 certainly that warrants a look at the entire company, if
18 the entire company can suffer the consequences of
19 failure with the financial failure of the company. But,
20 again, Staff's position is that this is not an emergency
21 situation.

22 There was a financing that the company undertook
23 that was approved in, or commenced in December of '07.
24 And at that time the company said that it did not need a
25 rate increase in order to service that debt. Staff took

1 a look at the numbers and Staff agreed that the company
2 would be able to service that debt without a rate
3 increase. And now there is a changed circumstance
4 somewhere where the company says now it does need a rate
5 increase.

6 And really the only thing that comes to mind is
7 the additive cost overruns, that somehow the cost
8 overruns are responsible for the inability to service
9 this debt. Well, that just raises additional questions
10 as to who is responsible for the cost overruns. And
11 certainly, certainly if the contracts at issue were
12 contracts belonging to an affiliated company, then the
13 question becomes should the company, should the water
14 and sewer company have taken a more active role in
15 supervising those particular contracts to make sure that
16 there were not cost overruns. And if they didn't
17 adequately review those contracts or didn't adequately
18 keep up on the construction progress, why should that
19 burden be shifted to the ratepayers to make up for the
20 sudden financial necessity of a rate case? And in
21 Staff's position, that just didn't need to happen, that
22 the company has enough money to get it through until
23 this particular permanent rate case has been resolved.

24 And Staff's primary witness is going to be
25 Mr. Becker. And Mr. Becker is prepared to thoroughly go

1 through all of the finances in this case and talk about
2 why the company can meet its financial obligation until
3 the permanent rate case is resolved.

4 Thank you.

5 ALJ RODDA: Okay. Thank you, Mr. Torrey.

6 Ms. Wood, before we take our lunch break, tell
7 me again what you expect the ADEQ witness to testify to.

8 MS. WOOD: Yes, Your Honor. What we expect the
9 witness to testify about is what the current status is
10 of the APP permits that they have issued or not issued
11 to the company.

12 ALJ RODDA: And when you say APP --

13 MS. WOOD: I am sorry, aquifer protection
14 permits. Those are the permits that allow discharge.

15 At any rate, and then specifically the sudden
16 change requiring this emergency which was added last
17 Tuesday, we want to check and see, you know, what
18 exactly is it that ADEQ is requiring that is
19 overburdensome and whether or not specifically they are
20 requiring 2 million gallons per day increase for
21 Section 14.

22 And then, also, I think there is an issue
23 relating to Palm Shadows, what is the holdup there,
24 because there is a \$500,000 below-the-line expense in
25 our mind which is being treated by Mr. Bourassa but not

1 the company's accountant as an above-the-line expense.
2 And we want to know what the holdup is that that issue
3 cannot be resolved so the company is not spending
4 \$500,000 a year out the door with dealing with Palm
5 Shadows.

6 ALJ RODDA: Okay. And let me just ask, because
7 I want to just try and see if we can get that
8 information in an easier way, but perhaps not. Well, so
9 the holdup is the dispute between the company and ADEQ
10 over what -- so is that what was -- they are going to
11 testify as to what was required in the consent order, is
12 that -- or just --

13 MS. WOOD: More so the events that occurred
14 subsequent to.

15 ALJ RODDA: Okay. And that's what the dispute
16 between the company and ADEQ is?

17 MR. SHAPIRO: Well --

18 ALJ RODDA: I am just trying to understand.

19 MR. SHAPIRO: There are disputes between the
20 company and ADEQ as to permitting and compliance with
21 the consent orders. That's the very subject matter of
22 Ms. Wood's question. And Ms. Wood has just taken it a
23 step further. Now she wants to discuss whether the
24 plant is built for future customers or current
25 customers. Now we are moving it beyond what we

1 understood this person was being called for and now we
2 are straying into an area we thought was all agreed it
3 was for the permanent rate case. So I think it is more
4 compelling that the company be given every opportunity
5 to prepare to cross-examine Ms. Campbell.

6 MS. WOOD: May I respond, Your Honor?

7 ALJ RODDA: Yes, please.

8 MS. WOOD: Just simply we got an updated budget
9 from the company last Wednesday. That updated budget
10 was an expense for \$420,000 for moving Section 14 from
11 1.3 million gallons per day to 2.0 million gallons per
12 day. In my opening statement I mentioned it.

13 Well, I think we have a right to ask about it.
14 If they are spending money that affects their cash flow
15 and their ability to proceed and take care of current
16 customers by expanding facilities that don't serve
17 current customers, that's certainly relevant to our
18 evaluation of cash flows.

19 ALJ RODDA: Okay. Anything further,
20 Mr. Shapiro?

21 MR. SHAPIRO: I think Ms. Wood again continues
22 to prove our point, that we need to prepare for this
23 witness. Thank you.

24 ALJ RODDA: Okay. Commissioner Newman, did you
25 want to --

1 COM. NEWMAN: Judge, my purpose for being here
2 today is purely to listen to testimony instead of
3 reading it off of a blank sheet and really getting an
4 appreciation for the witnesses and arguments of the
5 case. And I offered to come down here personally to be
6 a witness to that. I know I am going to be the ultimate
7 decision maker and I wasn't going to ask a case, but I
8 found it -- ask a question -- but I found it profound
9 and I would just like further, further arguments from
10 all three counsel on this issue of taking the whole
11 company approach.

12 Mr. Shapiro made some pretty strong comments
13 that he didn't think that should happen in this case,
14 even though it was brought out at least in the public
15 testimony, which is all I know, and I have read some of
16 the briefs about the complexities of this company and
17 all the different divisions, a development company as
18 well as a provider company. And since I am a new
19 Commissioner, I just, I found it pretty astounding that
20 Mr. Shapiro would be so strident on that position. And
21 I think it is a very important issue in the case.

22 So I am going to give all three counsel a second
23 bite of that apple. I think it was well explained but I
24 think it is very important for the Commission to
25 understand.

1 MR. SHAPIRO: May I respond, Judge Rodda?

2 ALJ RODDA: Yes, please, Mr. Shapiro.

3 MR. SHAPIRO: I apologize, Commissioner Newman.
4 Obviously it wasn't well explained because I left you
5 confused.

6 We understand the reasons that RUCO and Staff
7 have taken a company-wide approach. And the exhibit I
8 mentioned in my opening statement was the crucial
9 exhibit is a company-wide cash flow statement. We said
10 in our rebuttal testimony that we think the Commission
11 ought to look at some company-wide issues, namely the
12 impact on the water division, which does not share the
13 same customer base of the problems arising from the
14 sewer division.

15 Our concern and what I was strident about is the
16 use of a company-wide approach to put a smiley face on a
17 very bad situation. That's what we are concerned about,
18 the attempt to obfuscate the serious problems with this
19 company's cash flow that originates only in one
20 division, not the other division. But we understand at
21 the end of the day the Commission is going to look at a
22 company-wide analysis to determine whether this company
23 can afford. And we will have Mr. Capestro explain in
24 some detail as well in response to statements that were
25 made today why the company had to go in as a company to

1 obtain the IDA funding.

2 So I apologize if I was confusing. We are not
3 objecting in its entirety to a company-wide approach. I
4 would say, to sum it up, we are objecting to the use of
5 a company-wide approach to do what we believe is
6 obscuring the serious problem this company faces and the
7 potential harm to everybody interested if some
8 additional revenues don't come in.

9 COM. NEWMAN: I was confused about your opening
10 statement because in this very complex relationship
11 between, you know, closely held units, I think they are
12 closely held, that there is a strong interrelationship.
13 I understand better from your explanation now what you
14 were referring to.

15 MR. SHAPIRO: And I just note, Commissioner,
16 just so the record is clear, this is one company. The
17 divisions are simply, I guess, just a, you know, a way
18 to refer to the two different services that they
19 provide. There is no separate corporate or other
20 structural entity called the sewer division or water
21 division. This is one company, Far West Water & Sewer
22 Company, that provides two services and has records for
23 each side.

24 COM. NEWMAN: Well, what I am now more referring
25 to, Madam Judge, is sort of a piercing of a corporate

1 shield, if you would. If it is more than just a water
2 and a sewer company, I could totally understand why the
3 Commission needs to understand the entire corporate
4 operations. And that seemed to be coming from the
5 public testimony that, that ratepayers are certainly
6 concerned about that. I think that that's something the
7 entire Commission, certainly myself am interested in, so
8 you know.

9 MR. SHAPIRO: And that's one of the reasons,
10 Commissioner Newman, Judge Rodda, that we have
11 Mr. Capestro here and prepared to testify, is to try and
12 help answer those kinds of questions.

13 COM. NEWMAN: Thank you.

14 ALJ RODDA: Ms. Wood, do you have anything in
15 response?

16 MS. WOOD: I think Commissioner Newman has the
17 same concern or same issues that he wants to visit that
18 RUCO does, so it has been adequately addressed.

19 ALJ RODDA: Mr. Torrey.

20 MR. TORREY: Thank you, Your Honor.

21 Commissioner Newman, generally here at the
22 Commission, yes, we have a policy where the Commission
23 does not like to see a separate utility subsidizing the
24 service of a second utility for the obvious reason it is
25 unfair to the ratepayers for the utility earning a

1 profit to prop up other people's rates. That's not what
2 we have in this case.

3 The company does concede that this is a single
4 entity with different operations within one single
5 utility. And I would liken that to a nonutility type
6 situation of, say, a Motorola or a Microsoft, somebody
7 like that, where they may have a research and
8 development division that clearly doesn't make money
9 because that's just not what they do. They are not
10 turning any profit, but the rest of the company overall
11 makes up for the money that R&D eats up. And that's
12 what you have in this case, is that we have a single
13 entity that is providing both water and sewer. And
14 while if these two were required to stand on their own,
15 one would clearly be more profitable and one would
16 clearly not, that's not what we have. We have a single
17 entity that took on some debt and is responsible for
18 that debt. Staff is not trying to paint a smiley face
19 on the finances of an entire company because the company
20 as a whole is able to meet its obligations. And that's
21 why we have taken that position.

22 COM. NEWMAN: And just one follow-up quick
23 question. I might be off here, Judge. Tell me if I am.

24 But with regards to beyond the sewer and water,
25 if there are other interests that are closely held that

1 are benefiting, shouldn't that be explored from the
2 forensic accounting point of view? Am I too much by
3 asking that question or is that within the confines of
4 this exploration?

5 ALJ RODDA: I am sorry, I was doing something
6 else.

7 COM. NEWMAN: I think it is a proper question.
8 I am just --

9 ALJ RODDA: I am sure if you asked it it is
10 proper.

11 COM. NEWMAN: I just wanted to make sure that I
12 wasn't going beyond the confines of jurisdiction, but...

13 MR. SHAPIRO: We don't have a problem with the
14 question, Commissioner Newman. We understand that the
15 Commission needs to assure itself, for lack of a better
16 word, that there is not some shenanigans going on
17 leading to the cash flow crunch that we are claiming.
18 We are here to answer those questions as fully and
19 fairly as we can.

20 COM. NEWMAN: Yes, thank you.

21 MR. SHAPIRO: You are welcome.

22 MR. TORREY: Yes, that's correct, Staff believes
23 that's something that needs to be explored, just to make
24 sure that the record is clear on something like that.
25 But I think that is something that is probably more

1 appropriate for the permanent rate case because it is a
2 very in depth issue, but certainly something Staff wants
3 to look into as well.

4 COM. NEWMAN: Thank you so much.

5 ALJ RODDA: Thank you all.

6 Let's take a lunch break and come back at 1:30.

7 (A recess ensued from 12:23 p.m. to 1:31 p.m.)

8 ALJ RODDA: Let's go on the record.

9 Over the lunch hour, I have had opportunity to
10 think about -- well, it is nice to see the face there --
11 to think about the ADEQ witness. And I understand what
12 you are all saying. I think, though, in these emergency
13 cases, with our schedule we always anticipate that last
14 round from Staff and intervenors, you never know what --
15 it is always on the stand, the surrebuttal is always on
16 the stand, and you don't know. I understand this time
17 it is a different witness.

18 So, and I also, Mr. Shapiro, just don't
19 understand the need for this witness to have to testify
20 twice, once in the deposition and once here. You will
21 hear the testimony. Now, I understand you won't have
22 seen it in advance, but, and I am going to give you
23 every opportunity to consider the testimony and come
24 back for cross-examination and to figure out if you need
25 a rejoinder witness at a subsequent time, but I think

1 that we can proceed or should proceed with the witness.

2 MR. SHAPIRO: So the witness, Judge Rodda, if I
3 understand, the witness will provide direct and then we
4 will come back at a later date to do cross-examination?

5 ALJ RODDA: If you decide you need additional
6 time --

7 MR. SHAPIRO: Well, we do.

8 ALJ RODDA: -- for cross-examination. Well, you
9 don't know, you haven't heard the testimony.

10 MR. SHAPIRO: So is the company being precluded
11 from following up her testimony with any discovery
12 effort?

13 ALJ RODDA: Let's see how that goes. I don't
14 want to -- I don't, I don't know what the testimony is.
15 That's why I can't --

16 MR. SHAPIRO: Well, okay, Judge Rodda, that's
17 the same disadvantage that we have expressed. We don't
18 know what the testimony is.

19 ALJ RODDA: Right. So I am taking, or deferring
20 decision on that request, whether you need additional
21 discovery.

22 MR. SHAPIRO: Okay. So we have to be prepared
23 to cross-examine tomorrow if we are directed to?

24 ALJ RODDA: No, you do not have to cross-examine
25 tomorrow.

1 MR. SHAPIRO: Oh, okay.

2 ALJ RODDA: We can come back at a subsequent
3 day. And I will go to Phoenix, because there is one of
4 me and multiple of you. The witness herself is from
5 Phoenix. And if you need a rejoinder witness, some
6 other, you know, occasioned by her testimony, you will
7 have opportunity to do that as well.

8 MR. SHAPIRO: Will the subpoena require
9 Ms. Campbell to appear again for cross-examination?

10 ALJ RODDA: That's what we will need to
11 ascertain. I presume, usually when either ADWR or ADEQ
12 come with a witness they have an attorney with them, or
13 she --

14 MS. WOOD: I don't know because I have not been
15 in this forum before as to what they do in the past, but
16 I know in this instance there is supposed to be an
17 attorney there. They were pretty definitive about that.
18 But...

19 ALJ RODDA: Before she testifies we will clarify
20 whether that subpoena covers subsequent days or whether
21 we have to -- what we will have to do to make her
22 available.

23 MS. WOOD: Once the subpoena is issued, isn't it
24 effective until the judge releases you as a witness? I
25 don't know.

1 ALJ RODDA: I think so, but, frankly, it doesn't
2 come up a lot in my life, because usually it is all
3 worked out ahead of time. All right? So, with time and
4 compensation.

5 And with that, I will ask Mr. Shapiro to call
6 your first witness.

7 MR. SHAPIRO: We will call Mr. Andrew Capestro.

8 ALJ RODDA: Mr. Capestro, if you would, just
9 come over here. And you will notice there is a little
10 button there. So just when you are speaking make sure
11 that green light is on.

12 MR. CAPESTRO: Thank you.

13

14 ANDREW J. CAPESTRO,
15 a witness herein, having been first duly sworn by the
16 Certified Reporter to speak the truth and nothing but
17 the truth, was examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. SHAPIRO:

21 Q. Mr. Capestro, would you please state your full
22 name and your business address for the record.

23 A. My name is Andrew J. Capestro, C-A-P-E-S-T-R-O.
24 My business address is 12486 South Foothills Boulevard,
25 Yuma, Arizona.

1 Q. Mr. Capestro, what is your affiliation with Far
2 West Water & Sewer Company?

3 A. I am married to one of the owners, Paula
4 Capestro. And my sister-in-law is the other owner. And
5 my father-in-law founded the company. And my
6 mother-in-law is still alive in Scottsdale looking over
7 us.

8 Q. And what responsibilities do you have on a
9 day-to-day basis with respect to the company?

10 A. Since early '07, I have been basically there
11 every day trying to keep everything together, talking to
12 staff members, being there with the supervisors and
13 trying to be the overseer.

14 Q. Are you being compensated for your work on
15 behalf of Far West?

16 A. Not in that position, no, I am not.

17 Q. Have you ever testified before the Commission
18 before?

19 A. No, I have not.

20 Q. Did you prepare prefiled rebuttal testimony in
21 this case?

22 A. Yes, I did.

23 Q. Is a true copy of your prefiled rebuttal
24 testimony before you marked as Exhibit A-1?

25 A. Yes, it is.

1 Q. Was Exhibit A-1 prepared by you and/or under
2 your direct supervision?

3 A. It was.

4 Q. Mr. Capestro, do you have any corrections or
5 changes to make at this time to your rebuttal testimony?

6 A. No, I do not.

7 Q. If I were to ask you the same questions as you
8 were asked in your rebuttal testimony, would your
9 answers be the same today?

10 A. They would.

11 MR. SHAPIRO: I will move for the admission of
12 Exhibit A-1.

13 ALJ RODDA: Okay. Any objection to A-1?

14 MS. WOOD: None.

15 MR. TORREY: No, Your Honor.

16 ALJ RODDA: All right. Then A-1 is admitted.

17 (Exhibit No. A-1 was admitted into evidence.)

18 (A telephone in the hearing room rings.)

19 ALJ RODDA: Just for the record, Commissioner
20 Mayes is now on the telephone listening in.

21 MR. SHAPIRO: We would like to take this
22 opportunity, Judge Rodda, to respond to some of the
23 public comment and opening statements this morning, if
24 we could.

25 ALJ RODDA: Certainly.

1 BY MR. SHAPIRO:

2 Q. Mr. Capestro, were you here this morning when
3 individuals from the public made comment on this case?

4 A. Yes, I was.

5 Q. Is Far West building this new sewer plant that
6 is costing in excess of 20 million or that will cost in
7 excess of \$20 million for a new development?

8 A. No. It is doing it because we were ordered to
9 do so by ADEQ.

10 Q. What development company is available to pay for
11 all of this new plant?

12 A. I don't know of any.

13 Q. Did you use funding from the IDA bonds to build
14 the water plant?

15 A. No.

16 Q. Are any of your plants currently shut down?

17 A. None of them. All seven are operating.

18 Q. A Mr. Storey claimed that the company was
19 inadequately capitalized. Mr. Capestro, did the company
20 borrow and spend more than \$20 million to improve its
21 sewer system recently?

22 A. It did.

23 Q. Aren't borrowed funds capitalization?

24 A. I believe it is, just a different cost of
25 capitalization.

1 Q. Are the funds or the accounts of H&S Developers
2 and Far West commingled?

3 A. Not a one.

4 Q. A Robert Gilkey claimed that the company
5 accepted responsibility for not keeping up with growth
6 and that that meant that the ratepayers don't have to
7 pay for these plant upgrades. Would you like to
8 respond?

9 A. Yes. The company had agreed that it had to make
10 these upgrades. It agreed that something had to be
11 done. That was not only in my testimony but in my
12 wife's testimony earlier before the Commission. That
13 didn't mean that the company would come up with money of
14 its own or make sure that the ratepayers didn't have to
15 pay for it. Quite frankly, if the company had been able
16 to come up with the money of its own, it would be part
17 of our rate base and the ratepayers would still be
18 paying.

19 Q. So accepting responsibility was a statement that
20 the company would do what it took to fix the problems,
21 would take the necessary steps?

22 A. Absolutely. We are not going to ignore the
23 problem.

24 Q. But not doing without return on and of the
25 investment in plant?

1 A. That's correct.

2 Q. Do the stockholders have four and a half million
3 dollars to pay to finish the upgrades required by ADEQ?

4 A. They do not.

5 Q. Is H&S selling thousands of lots today in your
6 service territory, Mr. Capestro?

7 A. No. Since the consent order came out in
8 October of '06, one of the developments is called the
9 Ravines, and actually 17 homes have been hooked up to
10 the sewer system. Another small development, which is
11 91 homes, which is El Rancho Encantado, has actually
12 hooked up five.

13 Q. Were you here for the opening statements this
14 morning?

15 A. Yes, I was.

16 Q. There was some discussion in Ms. Wood's opening
17 statement on behalf of RUCO regarding including payments
18 of fines. Is the company, does the company face a fine
19 from the State of Arizona?

20 A. The company faces a fine but those fines have
21 been stayed on appeal. And no payments have been made
22 except for restitution, and that was in 2006, I believe.

23 Q. And that was paid?

24 A. That's correct.

25 Q. And how much was that amount?

1 A. I don't have the number right off the top of my
2 head. I believe it was \$126,000.

3 Q. Ms. Wood, I believe, indicated that the company
4 was expanding the Section 14 plant. Is that in fact the
5 case?

6 A. The Section 14 plant is expanded from 150,000
7 gallons to 680,000 gallons this year, and that would be
8 expanded to a million three pursuant to ADEQ orders.
9 There has been engineering that has been paid for to
10 expand it to 2 million gallons a day, which we are
11 required to do under the ADEQ guidelines once we
12 determine that we will be at 85 percent of capacity in
13 the near future.

14 Q. So all that has been done so far is the
15 engineering to allow Section 14 to go from 1.3 when it
16 is finished to 2 million at some future date?

17 A. That's correct. The engineering and the ADEQ
18 process for acceptance takes anywhere from a year or
19 more. The last ones that we did we filed in November
20 and December of '06 and we did not get approval until
21 August of '08. So we had to be prepared so that we meet
22 the ADEQ guidelines. We do not want to get behind the
23 curve with ADEQ again.

24 Q. There was also comment in RUCO's opening
25 statement about unpaid effluent costs by golf courses.

1 Are there golf courses that are receiving effluent and
2 not paying for it?

3 A. The Mesa Del Sol Golf Course, which has no
4 connection with the sewer company, has an agreement that
5 they had with Mr. Eddie Lou before we acquired the golf
6 course that they don't have to pay effluent as long as
7 they accept it. The golf course, the Executive Golf
8 Course and the Las Barrancas Golf Course and the Par 3
9 Golf Course have received effluent and they have been
10 billed for it.

11 H&S itself does repairs for Far West, such as
12 whenever there is a line break, or anything else, they
13 have their backhoes and the like. We have nobody at Far
14 West that is capable to handle a backhoe. When they do
15 emergency repairs, they do a work order and then a bill.
16 And those bills and the effluent charges have been
17 offset.

18 Q. And so the only golf course that's not paying
19 for effluent today is the Mesa Del Sol Golf Course?

20 A. That's correct.

21 Q. And that was recognized, that Mesa Del Sol would
22 not be paying, in the last rate case decision?

23 A. That's correct. We are bound by contract.

24 Q. Why didn't the sewer division, why didn't just
25 the sewer division borrow the money from IDA?

1 A. The sewer division is not an entity of itself.
2 There is only one corporation, Far West Water & Sewer,
3 Incorporated.

4 Q. And whose assets are securing the IDA bonds?

5 A. The entire company's assets.

6 Q. And was that required by the lender?

7 A. The lender required that all assets of Far West
8 Water & Sewer, Inc. be used as security for the loan.
9 They did not want to be in second place behind the WIFA
10 loan. And the WIFA had security in all assets. So that
11 loan had to be paid off with the IDA bond.

12 Q. And that was all contemplated and addressed in
13 the company's financing docket?

14 A. That it was.

15 Q. There was also discussion in Staff's opening
16 statement about cost overruns. Who is responsible for
17 these cost overruns in your opinion?

18 A. Well, I am not sure that they are what we
19 normally term a cost overrun. When the company applied
20 for and received permission to obtain the IDA bonds, we
21 asked the engineers to give us their best estimate of
22 what it would cost for all the improvements required by
23 ADEQ. We took out of that any requirements for water or
24 anything else.

25 The IDA had approved \$32 million. But the

1 request was limited to what it was going to cost for
2 ADEQ improvements. That budget was put together after
3 consultation with various purveyors and suppliers of
4 equipment. But there had been no permits for
5 Section 14, Seasons, Del Oro and other things allowed at
6 that time. Once the permits were issued, we found the
7 parameters required by ADEQ, which included vadose
8 wells, backup generators, a certain size of piping and
9 the like. That is the time that we were able to
10 contract. Those contracts are quite a bit higher than
11 what was estimated at the time we applied for the
12 funding.

13 There was also a determination there was a need
14 for a Paula Street lift station which was not in the
15 original plans, and that was an additional 655,000, to
16 be able to pump it through because it was going such a
17 long distance. None of these amounts are affiliated in
18 any way with H&S. They are Zenon, which is owned by GE;
19 there is JCI, which has blowers; there is EDI which does
20 diffusers; the mechanical is done by Midwest
21 Environmental out of Missouri; and Amtek Electronic,
22 which is a local. And all did it pursuant to bid. Each
23 of those are higher than was the estimates originally by
24 Mr. Lee at Coriolis.

25 Q. So the estimates by your folks preceded the

1 permitting process with ADEQ?

2 A. That's correct.

3 Q. And the estimates were used to determine how
4 much to borrow from IDA?

5 A. That is correct. We were doing the estimations
6 right up to the date that we filed the application. And
7 we had asked to make sure that all those estimates were
8 as up to date as possible.

9 Now, certain things happened in the meantime
10 besides, other changes with ADEQ and what was necessary
11 in those permit. Pipe became a lot more expensive. The
12 Zenon plants are manufactured in Canada. And the
13 agreement that we had with Zenon would be, would be a
14 question of the inflationary rate and the exchange rate
15 between the dollar and the Canadian dollar. Those all
16 changed and have caused the things to be higher.

17 Q. How do you respond to concerns expressed by
18 customers that these cost overruns are simply the result
19 of incompetence at the management level of Far West
20 Water & Sewer?

21 A. I totally disagree. We asked competent
22 engineers to contact these people. Nobody would keep a
23 bid open longer than 90 days. As I said before, it took
24 a year and a half to get some of the permits issued.

25 And those, Your Honor, we had parameters but

1 everything was more expensive. And as I said before,
2 90 percent of all construction was done by somebody
3 other than an affiliated company of Far West.

4 Q. The consent order was the second consent order
5 and was signed in roughly the fall of '06, correct?

6 A. October of '06.

7 Q. And you are saying it was more than a year and a
8 half later until you got permits from ADEQ to start
9 bringing plant, to start building and constructing the
10 plant?

11 A. For the last plant it was August of, July or
12 August of '08. We received one in March of '08. And
13 then Seasons was somewhere in there, also. We did
14 receive permits to be able to do the force main for
15 Section 14. That went from Palm Shadows on. And we
16 were able to save money because we ordered the pipe
17 early.

18 However, the effluent from Palm Shadows has
19 nowhere to go until Section 14 is finished. And that
20 first phase is 680,000 gallons. The original plant was
21 150. You are going to take 3- to 500 gallons a day from
22 Palm Shadows, which will get you already up to 650
23 before you hook anything else up.

24 Q. So a great deal of the three years -- and has it
25 been three full years of the consent order -- roughly 20

1 months, a lot of that time was spent waiting for
2 approvals and requirements by ADEQ?

3 A. For the actual plants themselves, the consent
4 order required that we have ADEQ approval of the permit
5 before we started construction. We could do some minor
6 things like the force main because we had a permit for
7 that but other things we could not do because we were
8 under restriction. We asked whether or not we could
9 start building at our own risk. And ADEQ said we don't
10 want to have something that's built that's not usable,
11 we want you to wait.

12 Q. So most -- when did you start putting the
13 majority of these funds that you obtained from IDA into
14 actual plant?

15 A. Well, before the permits were issued in 2007, we
16 were able to do some things that didn't require a
17 permit, such as the Somat dewatering units. We were
18 able to buy those and put those in. The last one was
19 put in just recently.

20 About \$8 million was spent prior to the IDA
21 bonds coming into effect. They paid off the earlier
22 interim loan that we had. The remaining \$8 million was
23 almost all paid in 2008 with just about \$100,000 left
24 over for 2009.

25 Q. When did you become aware of the fact that you

1 had these cost overruns?

2 A. Probably as soon as we got the final bids in the
3 summer of '08. And we did attempt to find financing
4 from the summer of '08 on. And we thought we had it
5 with -- and then the, this crunch on credit hit and
6 nothing could happen.

7 Q. So you have been unable to finance the
8 additional four and a half million dollars that you
9 testified in your prefiled testimony you need to finish
10 these plant projects?

11 A. Since that time, we have been unable to do it.
12 We have asked GE and Zenon whether or not they will
13 finance their portion, which they refuse to. I have
14 asked the various suppliers whether or not they would be
15 willing to do it. We have gone to every bank that we
16 could do it and nobody is lending.

17 Our problem right now is, although we have the
18 majority of the plant installed, we cannot start up the
19 Zenon plant without Zenon representatives in there to
20 show us how to do it. We cannot do the diffusers
21 without representatives there. We have additional
22 blowers that have to be put in at Section 14 which they
23 won't deliver until we pay them the last \$300,000 we
24 owe. So we are stuck in limbo at the present time.

25 Q. Mr. Capestro, last area of discussion, there was

1 discussion in the opening statements about the company's
2 financing application in 2007. Did you ever oversee the
3 processing in that application on behalf of the company?

4 A. Yes, I did.

5 Q. If I recall correctly, that application was
6 filed in the summer of 2007, July, August?

7 A. I believe it was July of 2007.

8 Q. And at that time, was there not, wasn't there a
9 deadline for closing on the IDA funding?

10 A. Yes, there was. There was two different
11 deadlines. One was in October. We had to pay for an
12 extension of time on the IDA loan from October 1st on.
13 And then the last deadline was in December.

14 Q. So if you didn't get Commission approval before
15 those deadlines, what would have happened?

16 A. We would have lost our deposits, which were, I
17 believe, I don't have the number, I think it was over
18 \$500,000.

19 Q. And would you have lost the funding as well?

20 A. We would have lost funding. We had to do it
21 before a certain date in December. And we just barely
22 got into that time, within four days.

23 Q. Did that deadline and timeline for completing
24 the financing impact the company's decision whether to
25 file a rate, a request for a rate increase at the same

1 time as the financing?

2 A. I don't understand the question.

3 Q. Why didn't you seek increased rates at the same
4 time you filed that financing application?

5 A. Well, one of the things was that we had a date
6 by which we were supposed to file a financing -- a rate
7 case with the ACC pursuant to the earlier orders. We
8 were supposed to file by the middle of 2008.

9 The other thing is that we didn't do it at that
10 time. It was not until closing that I found out that we
11 would have to pay an additional \$40,000 per month
12 because the lenders that were paying the money on the
13 bond would not accept the six months of reserve of
14 \$960,000. They wanted 1,920,000 in reserves.

15 At that time, I did not know that our plants
16 would not be able to handle the effluent that we were
17 hauling from the Palm Shadows plants to our own plants.
18 All of them started to go over ADEQ standards as to what
19 they were supposed to do. And luckily, in February of
20 '08, I was contacted or I contacted representatives of
21 the city, which agreed that we could, under permit, be
22 able to dispose of our effluent with the city. All
23 those things really made a huge change in what we were
24 doing.

25 Q. And all those things occurred after the

1 financing was in place and you started to undertake the
2 improvements, which would have been sometime in '08,
3 correct?

4 A. That's correct.

5 Q. And you were involved in helping to supervise
6 the company's last rate case for the sewer division,
7 correct?

8 A. That is correct.

9 Q. And you have been involved in supervising the
10 permanent rate case filing that's pending but stayed and
11 this emergency rate case, correct?

12 A. Yes, I have.

13 Q. Mr. Capestro, in your opinion had you filed a
14 rate case at the same time as you filed that financing
15 application, do you believe that rates could have been
16 completed in time to meet the financing deadline?

17 A. I would have run into the same problem that I am
18 running into right now. And that is I wanted to have as
19 much plant in place as possible to do the, you know, the
20 rate case.

21 I had an earlier rate case where I was told that
22 we did not have enough plant in service for the base
23 year. And we ended up with \$1.75 increase, which was
24 not enough to cover anything. And what plant we had put
25 in in 2005 and 2006 wasn't considered. So I didn't want

1 to run into that situation again knowing that I was
2 just, you know, hadn't even received my permits yet. I
3 would be going to the Commission again and saying I am
4 going to do this in the future.

5 Q. Do you view the situation with the company and
6 its plant improvement process and its financial
7 situation as static?

8 A. Static, anything similar to dire?

9 Q. No. Static would be nonchanging.

10 A. No, no. I have got, I -- I cannot, the company
11 cannot eliminate the effluent removal until we finally
12 get to paying off Zenon to start up those.

13 Q. Let me stop you because I think you
14 misunderstood. Is the company's situation today the
15 same as it was six months ago?

16 A. No.

17 MR. SHAPIRO: Thank you. That's all I have.

18 MS. WOOD: Before I get started, Your Honor, can
19 I just take a two-minute break and be right back?

20 ALJ RODDA: Okay.

21 Commissioner Mayes, are you there?

22 CHMN. MAYES: I am.

23 (An off-the-record discussion ensued.)

24 ALJ RODDA: All right. Let's go back on the
25 record.

1 Commissioner Mayes, did you have a couple
2 questions?

3 CHMN. MAYES: Thank you, Your Honor.
4

5 EXAMINATION

6 BY CHMN. MAYES:

7 Q. And, Mr. Capestro, if you are not the right
8 witness for these questions, then I will ask them of
9 whoever is. But during the public comment session that
10 Commissioner Newman and I and Commissioner Pierce
11 attended, a number of public commenters expressed some
12 concern, very serious concern about various components
13 of the service that the company is providing.

14 For instance, and this is my first question, one
15 or two public commenters described sewage overflow
16 incidents in which the sewage was allowed to pool for a
17 period of time. And then another public commenter,
18 looking at my notes here, stated that there is a lift
19 station that bubbles over sometimes daily.

20 Can you address both of those assertions and
21 tell the Commissioner, or the Commission, excuse me,
22 what you are doing to address them.

23 A. Yes, Commissioner. On the sewage overflow, I
24 believe that the comments concerned a sewage overflow
25 that was behind the Palm Shadows plant. I am aware of

1 the fact that our emergency staff received a phone call
2 at 4:00 in the morning and that there was an overflow
3 going down the street.

4 What had happened is that the station that goes
5 into the Palm Shadows plant had not been kicked on. And
6 it caused the sewage that was flowing underground to go
7 to the lowest point and to come out. A couple of things
8 have happened.

9 Number one, we have entered into a contract with
10 Amtek Electric to make sure that they go through our
11 entire system to monitor it to make sure the electrical
12 is working right. This includes heat sensing
13 monitoring. And I just received a report back from
14 them. They have agreed to make sure that everything is
15 working correctly. They will monitor it with the heat
16 sensing system. They have already done some repairs and
17 they have given us a price that's discounted to be able
18 to take care of that.

19 On the second issue, I was actually out at this
20 sewage overflow behind the Palm Shadows plant about 6:00
21 in the morning. By the time I got there, what we call a
22 vac truck had already been there and had been washing
23 down the street and had been chlorinating wherever there
24 was sewage. That went into a retention basin. And then
25 the vac truck was used to remove the sewage. The vac

1 truck then went over and got more water and more
2 chlorine and chlorinated the basin again.

3 I contacted Mr. Rick Stacks of the Department of
4 Health for the County of Yuma and verified what we were
5 doing. And we submitted a written report to ADEQ,
6 including a phone call to Cynthia Campbell, that we had
7 had an overflow with ADEQ and this is what we had done.
8 We followed the public's protocol on that.

9 The biggest thing is trying to make sure that it
10 doesn't happen again. And that's why we have engaged
11 the services of Amtek. The second part of it is making
12 sure that we follow the protocol if there is an overflow
13 and that we do make sure it is chlorinated.

14 In addition to the rest of what they did, when I
15 was there barricades were put up saying that it was
16 nonpotable water. And I left there about 10:00 in the
17 morning. I got back about noon and the staff was still
18 out monitoring the situation.

19 Q. Okay. How many sewage overflows have you had in
20 the past two years?

21 A. In the past two years, that's the only one I
22 know of that went down the street. There was an earlier
23 one that there was public comment that there was an
24 overflow someplace else. And that was -- and I
25 investigated that. I think that occurred in 2005. And

1 that was where a system of improvements, on-site
2 improvements had been turned over by the contractor.
3 And the contractor in one of the sewage lines left a
4 plug in one of the lines when he turned it over. That
5 plug was removed and the flow was taken care of.

6 Since that time, we make sure that there is a
7 complete inspection, not just the county inspection, but
8 we scope all the lines. We throw, throw a pole through
9 it. We make sure there is no blockage of any type in
10 any type of on-site improvements that we take over.

11 Q. Okay. Can you address the lift station issue?

12 A. I am not sure which one they were talking about.
13 There have been lift stations that could not handle the
14 flow. That is part of our improvements at the present
15 time. We have put different size motors and pumps in
16 there. We have investigated.

17 There was a lift station, number 15 I believe,
18 that was having problems. And we were hauling from that
19 lift station, oh, a year and a half ago. And then we
20 found that there is, somewhere before it went into the
21 plant, it teed off with another one. And there was,
22 there was a backup. And what we did was we made sure
23 the T was -- we dug up the ground, made sure there was
24 no longer a T there and made sure it flowed into the
25 plant properly.

1 Q. Okay. So the lift station number 15, you
2 believe that's the one that had the problem and you are
3 making repairs to that one?

4 A. It has been taken care of and has been taken
5 care of for some time now.

6 Q. Okay.

7 A. I don't know of any of the others.

8 Q. Okay. Well, you know, certainly, you know, I
9 think one of the things that we heard from the folks who
10 came to the public comment session, and there were, you
11 know, possibly more than 800 people in the room, was
12 that they don't think that it is fair for the company to
13 be asking for such a high rate of increase when the
14 company is also operating a system in which lift
15 stations bubble over and, you know, you have sewage
16 overflows. So I think these are questions that we ought
17 to pose as well to DEQ and our Staff. But I will move
18 on.

19 A. Well, Commissioner, there is a problem that we
20 have over in the area that these people -- most of the
21 people that were talking were part of the Palm Shadows
22 plant and that's the one being shut down because it
23 cannot handle the flows.

24 Q. And, sir, can you just tell me, who do you think
25 is responsible for building a quality utility system?

1 A. Well --

2 Q. Does your company take responsibility for, in
3 the first instance, not building an adequate sewage
4 treatment system?

5 A. Ultimately it is our problem. The Palm Shadows
6 plant was actually built by a developer that was
7 developing in that area. And the plans and
8 specifications that he used were approved by ADEQ. And
9 there were engineering tests that showed that it would
10 handle a certain flow. Unfortunately his engineering
11 reports were incorrect.

12 Q. Was there any financial relationship or is there
13 any financial relationship between the individuals who
14 own the utility and that developer?

15 A. No.

16 Q. None?

17 A. No. It is a Jacobson company. He is totally
18 independent. There is no financial connection between
19 us.

20 Q. What about other developers in the area?

21 A. The only development that H&S Developers has
22 which I believe that you are referring to having a
23 relationship with Far West, most of H&S' effluent from
24 its developments went to the Marwood plant, which is
25 still functioning. And we are not going to be improving

1 that plant except for the fact that we put in a Somat
2 dewatering unit which would reduce the cost of removing
3 sludge.

4 That is a plant that we put in in 1994, and it
5 is continuing today. It only requires B effluent, not A
6 plus effluent. But it still functions properly. And
7 that took care of most of the development by H&S.

8 The Section 14 plant was set up for 150,000
9 gallons a day. That was paid for by H&S again. And
10 that would function properly were it not to have to take
11 over the effluent from the Palm Shadows plant.

12 There is only two plants that service anything
13 that has to do with H&S Developers, and that's the
14 Section 14 plant and the Marwood plant. The Del Oro
15 plant, there is absolutely no development around there
16 that has anything to do with any affiliated company.
17 That's mostly the Mesa Del Sol company and the Elliott
18 Group.

19 Q. Okay. Another public commenter complained that
20 the company does not return phone calls in a timely
21 manner. And that person, this person stated that the
22 company is, and I quote, totally unresponsive, or never
23 returns phone calls I believe was the verbiage.

24 Is this true? Are you -- do you have someone
25 who answers the phone both during the day and during the

1 evening hours? What is --

2 A. Yes.

3 Q. What is the system you have for responding,
4 responding both to routine phone calls and emergencies?

5 A. We have three people that answer the phone
6 during the day. We have a supervisor there and another
7 assistant.

8 Q. Why would several people state that you never
9 return phone calls?

10 A. I went through the transcript of the people that
11 made those comments. I did find that there were reports
12 on some of them, some of them that didn't show there was
13 any phone calls.

14 If it is a sewer problem or a water break
15 problem or anything like that, a supervisor goes out to
16 the scene. And quite often nobody is out there.
17 Sometimes I make phone calls back and they are not
18 there. We have, we have instituted a thing where we
19 will make sure that there is a door hanger that goes
20 onto the person's door that we had not done in the past
21 to verify that we had, that a representative had been
22 out there.

23 The rule is, and it has been since I have been
24 involved in 2007, was that we will go out there within
25 24 hours. Sometimes I, we get complaints, they have

1 called us and I find out they have actually called the
2 city and sometimes they have called Rural Metro.

3 I was astounded to find out that there was so
4 many people that said phone calls were not returned.
5 And if, if the records are incorrect, I apologize for
6 that. I sat down with the entire staff and our outside
7 supervisors and made sure that they understood the
8 implications. And, quite frankly, a lot of the people
9 that work inside and thought they were doing a good job
10 had been there during the public comment session and the
11 next day I had quite a few people in the office crying,
12 saying how much better can we do. And they are trying.
13 And, if we haven't been doing a good job in the past, we
14 are going to do a better job. We follow the guidelines
15 set forth by the ACC and ADEQ for responses. And we
16 note in everybody's file when there is a phone call and
17 what action we have taken. And --

18 Q. Okay. Well, we have had cases in the past or I
19 have heard of cases in the past in which there were
20 numerous complaints about the ability of the company or
21 willingness of the company to return phone calls. And I
22 think maybe -- and we instituted orders that require
23 the, that require those companies to make changes. So I
24 think that's something we may want to consider in this
25 case, you know, at a bare minimum.

1 A. Commissioner, I would be very happy to follow
2 any guidelines for this. I must say that we did do a
3 housecleaning at the end of 2006. The superintendent
4 was let go. The director of operations was let go.
5 Soon after that, the head of the sewer division was let
6 go. And we ended up with what I think is a pretty
7 doggone good staff right now.

8 We have four, three operators that are Class 4
9 in the State of Arizona. In all of Yuma County there is
10 four. The city has one, we have three of them. These
11 people have been educated and they know what to do. And
12 I think that it is -- we just have to be ever vigilant
13 going out there, verifying that these calls have been
14 made. And on occasion, I have been out there myself
15 knocking on the same doors making sure my
16 superintendents have been out there.

17 Q. Well, it would appear the complaints, the
18 concern by your customers is that you are not even
19 answering the phone, not that, you know, that phone
20 calls aren't being returned. That's what the
21 Commissioners heard at the public comment session. And
22 it wasn't just from one person, so...

23 A. I heard that, Commissioner. And I know that, I
24 believe that that was happening a couple years ago. I
25 don't know if it is still happening. If it is still

1 happening, then my staff is not doing their job.

2 Because I pulled all these files to determine
3 whether or not there was any complaints. According to
4 the earlier Commission ruling, we keep logs of every
5 odor complaint. And we show exactly when we are
6 supposed to go out, when we did go out there and what
7 action we took. So we keep a log of, copy of a log of
8 every odor complaint. Billing complaints are taken care
9 of in the office. And any water issue, whether it is a
10 meter or not, we have a lady that is a Grade 4 all the
11 way across that is in charge of water distribution. And
12 she is out there making sure the meters are working
13 properly. And if there is any question at all we would
14 replace it with a new meter.

15 Q. So you have three people answering the phone?

16 A. We have a customer service bank there of three
17 people.

18 Q. And how many customers?

19 A. We have approximately 15,000 customers.

20 Q. Come again? 15,000 customers?

21 A. We have approximately 15,000 customers.

22 Q. Okay.

23 A. And if you go to the office, there is not that
24 many phone calls. They are more than able to handle
25 that.

1 Q. Well, obviously not, if we are hearing
2 complaints from your customers that they are not getting
3 their phone calls returned. But I am going to move on
4 to a different topic and would like Staff to address
5 this question when they are on the stand.

6 One of your customers stated that Far West
7 doesn't have any maps of its service territory. Can you
8 address that?

9 A. We have complete maps. In fact, we even have an
10 aerial map that will show where all the lines are of the
11 service area, where its water, where its sewer. Plus,
12 we have available for people the map of the service area
13 that is coded from the ACC Staff itself that was given
14 to us. That is kept over there, also.

15 I don't know why anybody would say there was no
16 map of the service area. There is a big one on the wall
17 of the over flight. Plus we have the color coded one
18 from the ACC.

19 Q. Okay. And, Mr. Capestro, I don't know if you
20 are the proper witness, maybe it is another witness, to
21 address the issue of potential rate shock associated
22 with this increase request. Are you the rate witness?

23 A. No, I am not the rate witness. But I did hear a
24 lot of people saying that they should -- that we are
25 going to be so much more than the City of Yuma. And I

1 double checked the Yuma rates. And if you were not
2 within the city and having the city taxes take care of
3 it, this year it is 39.17 per household per month. Next
4 year it is 21 -- it is \$41 and change. And the next
5 year after that it is \$43 and change. And I know that
6 they are building new plant and looking for more rate
7 increases themselves. So if they went to the city, we
8 are about half of what the city is right now at 21.75.
9 Plus, if any of them did go to the city, the city hookup
10 charge is \$6,577 per unit.

11 Q. So you are, right at your current rate, you are
12 saying that you are half of what the city is?

13 A. My current rates are half of what the city
14 charges for anybody that is not within their city
15 limits.

16 Q. Okay. Well, what does the city charge for city
17 limit customers? And strike that. Never mind. That
18 really doesn't go to the question.

19 The company is asking for a, in its 2008 general
20 rate case, 241 percent rate increase, is that correct,
21 Mr. Capestro?

22 A. I am not the rate person on that. Mr. Bourassa
23 would be able to answer that.

24 CHMN. MAYES: Mr. Bourassa, you are right.

25 I will ask those questions of Mr. Bourassa, Your

1 Honor. Thank you very much for the opportunity to ask
2 some questions.

3 THE WITNESS: Thank you.

4 ALJ RODDA: Thank you, Commissioner Mayes.

5 All right. Ms. Wood.

6 MS. WOOD: Thank you, Your Honor, Commissioners.

7

8 CROSS-EXAMINATION

9 BY MS. WOOD:

10 Q. Good afternoon, Mr. Capestro.

11 A. Good afternoon.

12 Q. I was listening to your testimony earlier and
13 you said your qualifications where you were married to
14 the owner and relatives to everybody else in the
15 business.

16 Do you have other qualifications? Do you serve
17 in another capacity?

18 A. Yes. I am an attorney at law, been practicing
19 since 1967.

20 Q. Okay. And are you Far West legal counsel? Is
21 that what you do day to day?

22 A. Most of my day-to-day work is not as legal
23 counsel.

24 Q. Okay. What is it?

25 A. Most of my day-to-day work is making sure that

1 these plants are built and making sure that the staff in
2 the field are doing their job. And I go around the
3 entire area to make sure that, like Section 14, that
4 there is no odors over there and that enough has been
5 pumped out. And I go to Del Oro to make sure they are
6 finishing the construction over there and there are no
7 problems. I go to each one to find out what the flows
8 are each day to see whether or not we are keeping up
9 with it.

10 Q. So kind of a manager as opposed to a lawyer?

11 A. Jeeze. Manager seems to work okay, but I don't
12 have a job title.

13 Q. Okay. How do you get compensated?

14 A. I am not compensated for this work that I do. I
15 am compensated on an hourly basis for the legal work I
16 do.

17 Q. Okay.

18 A. We have a case with the ADEQ that's pending at
19 the present time. I charge for that.

20 Q. Okay. How much were you, or how much were you
21 paid by Far West in 2009?

22 A. I don't have a clue.

23 Q. Is it listed someplace on financial information
24 that would be easier?

25 A. For 2009?

1 Q. Well, let me try 2008, because I think that's
2 where we have the financial information.

3 A. It should be, most of it would be under
4 extraordinary.

5 Q. Extraordinary. Do you mean below the line?

6 A. Pardon me?

7 Q. Do you mean below-the-line expenses?

8 A. Below the line. Most of it, when it was, when
9 it has something to do with a case like this, it would
10 be below the line, along with the effluent hauling and
11 the legal fees for other counsel that we have retained.

12 Q. Okay. And you don't know exactly how much that
13 would be?

14 A. I haven't looked at it.

15 Q. You are a very generous manager, slash, lawyer
16 that you don't know how much you make. Do you have an
17 hourly fee?

18 A. I do.

19 Q. What is it?

20 A. 285 an hour.

21 Q. And do you charge that to Far West?

22 A. Yes, I do.

23 Q. Do you receive compensation from H&S development
24 as well?

25 A. Yes, I do.

1 Q. Okay. And what do you do for them?

2 A. I spend -- I am legal counsel for them. And I
3 also handle the day-to-day work. I am usually there
4 from 6:00 in the morning to 8:00 or 9:00 at night.

5 Q. And how are you compensated there?

6 A. I am on a retainer.

7 Q. Is it more, is it a general counsel position or
8 manager?

9 A. It is more of a general counsel position than
10 anything else.

11 Q. If you were managing Far West on a day-to-day
12 basis, what are the roles of Mrs. Capestro and
13 Mrs. Braden?

14 A. They are in the field also. Paula Capestro is
15 usually out talking to the construction people at one of
16 the sites. She is making sure that they are keeping on
17 track. She is out looking for money to make sure that
18 we could finish this. Sandy Braden is doing similar
19 things also.

20 Q. Do they have other professions or businesses as
21 well?

22 A. Yes, they do.

23 Q. What do they do?

24 A. They are both officers of H&S Developers. And
25 Paula is a, has Paula Capestro Blood Stock, which is a

1 horse trainer which she does on weekends. She is
2 usually at the track on Fridays and -- I mean on
3 Saturdays and Sundays.

4 Q. Okay. Where do you and Mrs. Capestro live?

5 A. We have a home in Yuma on Ironwood --

6 Q. Uh-huh.

7 A. -- where we are there, I am there five days a
8 week, she is there four to five days a week. And then
9 we have a home in San Diego that we try to go to on
10 weekends. But for the last three weekends I have been
11 unable to go to San Diego.

12 Q. Okay. What are Mrs. Capestro and Mrs. Braden
13 paid for their duties with Far West?

14 A. They are both paid 72,000 a year.

15 Q. 72,000. And that's an increase over the year
16 prior, correct?

17 A. Their income was increased when the general
18 manager, Dusty Thomas, was let go, the superintendent
19 was let go, and the water chief was let go.

20 Q. So they had an increase, would it be fair to
21 say, subject to check, 30 percent increase in their
22 salaries?

23 A. I think they went from 60 to 72.

24 Q. You think it was from 60 to 72?

25 A. Correct. And I think that increase was in '07.

1 Q. '07?

2 A. About the third month of '07.

3 Q. Okay.

4 A. Which was appropriate because of the exposure to
5 liability that they had with working on everything they
6 were doing.

7 Q. Thank you.

8 Is the company insolvent?

9 A. I know Far West sewer is. Whether or not the
10 overall company is, it depends on your definition of
11 insolvent. Does it have more assets than liabilities?
12 I believe so. Can it meet its bills as they come due?
13 No, it cannot.

14 Q. Okay. Let me ask the question the way in which
15 I wanted it answered and be more clear. By company,
16 when I'm saying company in my questions, I am going to
17 ask you today, I am going to be referring to the company
18 total Far West Water & Sewer. If I am asking about
19 either of the divisions, I will specify that the
20 question is specific to the division.

21 A. Thank you, Ms. Wood.

22 Q. Thank you.

23 The company procured financing in 2007, correct,
24 through IDA bonds?

25 A. That is correct.

1 Q. And the total amount was 25.2 million?

2 A. That is correct.

3 Q. Okay.

4 A. I think it came out to 25.19.

5 Q. Okay. And thank you for that clarification.

6 And from that you maintain a reserve account of
7 approximately 1.6 million?

8 A. No.

9 Q. What do you do?

10 A. We are required to maintain a reserve account of
11 1.92.

12 Q. 1.92?

13 A. Which is done at the rate of \$40,000 a month
14 until it is there.

15 Q. Okay. So is that, does it always have to be
16 1.92 or is it on an annual basis?

17 A. It has to be a minimum of one year principal and
18 interest.

19 Q. So any 12-month period has to include this
20 certain percentage?

21 A. What the requirement is, once we reach 1.92,
22 that if anything is ever removed from that to make
23 payments, we have to replace it.

24 Q. Okay. Thank you for that clarification.

25 Did you also pay the WIFA loan, correct, out of

1 the proceeds?

2 A. We paid the WIFA loan because WIFA had a first
3 on all the property of Far West Water & Sewer, Inc.

4 Q. What was the approximate amount?

5 A. The approximate loan?

6 Q. The approximate amount of the WIFA loan that you
7 paid.

8 A. I believe it was, it was over 4. It was either
9 4.2 or 4.4.

10 Q. Okay. So about 4.4?

11 A. It could have been --

12 ALJ RODDA: That's million, right?

13 THE WITNESS: 4,400,000.

14 The payoff of the WIFA loan was \$4,449,740.62.

15 BY MS. WOOD:

16 Q. Okay. Can we round it to 4.49 or 4 -- what did
17 you say? 4.4?

18 A. 4.45, 4,450,000.

19 Q. Okay. That's what we will say then.

20 And then you also paid a bond anticipation note
21 out of that, correct?

22 A. That is correct. That was the interim.

23 Q. Okay. And that was, if I understand it
24 correctly, and I have not been here long enough to
25 understand much, it was like a bond anticipation note

1 procured by the shareholders, is that correct?

2 A. That is correct. They put all of their shares
3 of Far West Water & Sewer up for security. And it was a
4 one, less than one-year note so that we would be able to
5 pay for the engineering and make deposits while we were
6 waiting for everything to be approved. Originally we
7 borrowed this money because we believed that ADEQ would
8 allow us to build much faster than we did.

9 Q. Okay. After you repaid the bond anticipation
10 note, WIFA loan, and maintained that, that reserve
11 account, that leaves you about 2 million out of the 25.2
12 to apply toward construction, correct?

13 A. No.

14 Q. Okay. You explain it to me, then.

15 A. No. When we paid down those amounts, what was
16 left in the account at the beginning of 2008 was
17 approximately \$8 million.

18 Q. Okay.

19 A. Because not all of the previous loan was used
20 up. There also were fees for -- there is an
21 underwriter's discount that had to be paid out of it.

22 Q. Yes.

23 A. There were interest that had to be paid on the
24 old loan which was rolled into it and the like. To be
25 able to close this loan, Far West had to come up with

1 \$536,000 that was not included in the loan to be able to
2 close.

3 Q. Correct. Now, you provided some document to
4 RUCO in response to a data request with regard to what
5 the 17.35, I guess 17.735 loan. Is that the loan you
6 paid off the bond anticipation note?

7 A. Correct.

8 Q. Okay. I am going to show you what I would like
9 to have marked as Exhibit R-2. I am going to reserve
10 Mr. Rigsby's testimony for our case.

11 (Brief pause.)

12 BY MS. WOOD:

13 Q. Mr. Capestro, this is a copy of the construction
14 fund balances worksheet -- all right. Sorry. Tell me
15 what I would call this. A construction funds balance
16 sheet?

17 A. That's correct.

18 Q. Okay. And you provided it to RUCO last week in
19 response to a data request?

20 A. Correct.

21 Q. Okay. We had asked what the, you know, bond
22 anticipation note was used for. Can you explain to the
23 judge what the bond anticipation note, what those
24 proceeds were used to pay for?

25 A. Well, the bond anticipation note, if you take a

1 look at the line above the bond anticipation note, which
2 was 17,738,000, there was still, left in that note to be
3 paid out was 8, I believe that is \$8 million.

4 There was another itemization of where the other
5 8 million went. I don't have it here.

6 Q. Okay. Let's just go through --

7 A. I do know that the contracts required that
8 10 percent of the estimated construction costs be paid
9 in engineering. And there was a 10 percent for
10 construction management to Coriolis that had to be paid
11 out of that. Plus I do know that we had a number of
12 other payments. We paid for a Zenon plant about
13 a million dollars. And we made at least -- I am not
14 sure what the other payments were.

15 Q. Let me just go through the worksheet with you
16 and maybe the balance sheet with you and we can get some
17 answers.

18 A. Okay.

19 Q. If I understand correctly, you received the bond
20 anticipation note sometime in December of 2006 according
21 to this document, is that correct?

22 A. Correct.

23 Q. And it was for the amount of 17,735,000,
24 correct?

25 A. The, okay, the -- this was in 2006, correct.

1 And that paid off the --

2 Q. I am just going to do one piece at a time,
3 Mr. Capestro --

4 A. Okay.

5 Q. -- because I am a little slow on the numbers.

6 A. There are two bond anticipation notes.

7 Q. I recognize. I am going to get there. I am
8 going to ask you a question and you can give me that
9 information.

10 A. All right.

11 Q. So the original proceeds were 17,735,000 that
12 you received sometime in December 2006?

13 A. That's correct.

14 Q. And from that you paid another note of
15 11,130,000, correct?

16 A. Correct.

17 Q. What is the 11,130,000?

18 A. The 11,130,000 was the original bond
19 anticipation note.

20 Q. Okay. Who was that procured by?

21 A. That was procured by Paula Capestro and Sandy
22 Braden putting up their stock to be able to start the
23 project. And out of this amount originally was paid the
24 original fees to Coriolis for management and
25 engineering, plus other deposits. And there should be a

1 breakdown because we presented the breakdown from the
2 beginning.

3 Q. Okay. I want you to look back at the
4 11 million.

5 A. Yes.

6 Q. And that was procured apparently in July of
7 2006?

8 A. That is correct.

9 Q. Okay. And from that, if you look down under
10 the, I believe it is the column called construction
11 draws, that's six columns over, third from the end --

12 A. Okay.

13 Q. -- is this to denote construction draws made on
14 that \$11 million loan which indicates \$6,110,640.62?

15 A. I do not have the other document that goes with
16 this so I wouldn't be able to answer you.

17 Q. Well, where does that \$6 million figure occur on
18 your balance sheet, under the title what?

19 A. It would be under construction draws. But the
20 answer is I don't know. I would assume but I do not
21 know whether or not that includes engineering and other
22 construction draws. I do not know.

23 Q. I wasn't speaking that much of the specifics --

24 A. Okay.

25 Q. -- just whether or not it was construction.

1 A. Oh, it is.

2 Q. And then when you go backwards it appears as if
3 the first column says it is for construction draws 1
4 through 9. Would that be correct?

5 A. That's what it says.

6 Q. Okay. So whatever that is, it is construction
7 draws 1 through 9?

8 A. Can I make a comment how these draws were made?

9 Q. I don't have that question right now, but I
10 will -- you know, if I get to it, answer it.

11 A. Okay.

12 Q. Of that 11,130,000 for construction draws 1
13 through 9, there was a remainder from the original
14 11 million bond anticipation note. What was that
15 remainder, or that cash balance?

16 A. I don't see it.

17 Q. Well, looking --

18 A. It would seem to me it should be 5, but I don't
19 know. I don't see it.

20 Q. Looking on --

21 A. Yes, it does look like 5,032,000 was the
22 remainder --

23 Q. Okay.

24 A. -- left.

25 Q. So approximately \$5 million, can we say that?

1 A. That's correct.

2 Q. Okay. Now, in 2007, if you look under column
3 one it says 2007 construction draws 10 through 15. What
4 is the amount of that construction draw?

5 A. 2,796,220.

6 Q. So from this balance sheet here, and I know
7 there is probably another one for 2008, but just
8 through, it says July 14th of 2006 through November 30th
9 of 2007, with construction draws 1 through, looks like,
10 15, it looks like the amount is roughly \$9 million;
11 would that be correct?

12 A. That is correct.

13 Q. Now, how much have you spent in excess of that?

14 A. Well, the other column over here which shows
15 there was still a remainder at the very end of
16 8,657,000, that's all been spent.

17 Q. And that would be on construction draws that are
18 16 through whatever?

19 A. Whatever. All the construction draws went
20 through Regions Bank as trustee. All of the
21 construction draws had to be signed off by the engineer
22 certifying that they were part of the contract. So when
23 you are looking at draws number 1 through this, those
24 were draws that were signed by the engineers, sent to
25 Regions Bank and Regions Bank would disburse the funds.

1 Q. Now, in the public comment people keep talking
2 about you having an affiliated bank. Do you have a bank
3 with which you have a, I don't know, pecuniary interest
4 in?

5 A. No. There was a bank that my wife's father was
6 one of the founders of. And his picture and her
7 mother's picture is there as you walk into the bank
8 showing that they are the founders of The Foothills. We
9 have no stock in that bank.

10 Q. Okay. Just the same information continues to
11 appear in your financial documents from the accountant,
12 and that's why. It said a related party bank. So I
13 just thought I would ask you the question.

14 A. No, no.

15 Q. All right. You indicated Far West owes property
16 taxes of some \$300,000 which they cannot pay.

17 A. That is correct.

18 Q. What are those property taxes for, what year?

19 A. They are for the current year. Well, actually,
20 our taxes, I think, are for the previous year. So it
21 was the payment that was due last, I believe,
22 October and the one that's due now.

23 MS. WOOD: Okay. Can I have -- I have a
24 clarification and we will look together at this
25 document. I am going to have this marked as, let's see,

1 I know it is out of order, I am going to mark it as our
2 11 because I have some other ones that are already
3 marked.

4 ALJ RODDA: That's perfectly fine.

5 MS. WOOD: Thank you.

6 BY MS. WOOD:

7 Q. Who do you pay your taxes to?

8 A. County of Yuma.

9 Q. Thank you.

10 ALJ RODDA: This one that you just passed out
11 you are going to call R-11?

12 MS. WOOD: Yes. Believe it or not I already
13 have these exhibits already lined out.

14 ALJ RODDA: No, that's fine.

15 MS. WOOD: Thank you. I know I am a little
16 unorthodox but it will make sense in the end.

17 ALJ RODDA: That's what they all say.

18 (An off-the-record discussion ensued.)

19 BY MS. WOOD:

20 Q. Do you have a copy of what is marked as R-11 in
21 front of you?

22 A. I don't see any mark on it, but yes, I do.

23 Q. Can you identify that for me?

24 A. I assume -- it says Yuma County, Arizona; owner
25 information, Far West Water & Sewer.

1 Q. Is this your tax account? Is it 55-503?

2 A. I don't have a clue.

3 Q. Who in the company would have a notion?

4 A. Who would have that information?

5 Q. Yes, or understand that.

6 A. Debbie Smith, our comptroller, giving us the
7 number.

8 Q. Well, you testified you had in excess of
9 \$300,000 worth of taxes. What do you base that on?

10 A. Based on, our taxes are based on two things.
11 One is on income. You turn in your, the report of your
12 income and your taxes are based upon that. The other is
13 some of the properties are taxed by themselves that are
14 not within that parameter of being taxed based upon
15 income.

16 Q. Okay.

17 A. And I received a report from our comptroller
18 giving me the amounts of taxes that are owed.

19 Q. Okay. Now, given that you are contending that
20 your company has a loss, to your knowledge you are not
21 paying income taxes?

22 A. I didn't say income tax. And, no, we haven't
23 paid income tax.

24 Q. Okay. So we are really talking about real
25 estate taxes?

1 A. Real estate taxes for utilities are based upon
2 your income. They are not just based upon the appraised
3 value.

4 Q. Okay. I understand that.

5 A. So it doesn't matter whether or not you have a
6 profit. It is a question of gross income.

7 Q. Okay. I hear you now. Now, looking at page 2
8 of Exhibit R-11 --

9 ALJ RODDA: Are you saying -- you say gross
10 income. Do you mean revenue?

11 THE WITNESS: Gross revenues, excuse me. I was
12 using the wrong term. Thank you.

13 BY MS. WOOD:

14 Q. And I did not notice, so that tells you where I
15 am at.

16 Looking under the tax year 2008, do you see
17 that?

18 A. Yes, I do.

19 Q. There are one, two, three, four, five, six
20 entries. And those six entries, would you, subject to
21 check, accept that they are total amount of \$77,310.98?

22 A. Looks like that.

23 Q. Okay. Have you paid these sums?

24 A. No.

25 Q. Okay. And that's what is outstanding?

1 A. No.

2 Q. It is not outstanding or you have paid it?

3 A. In addition to that are the taxes based upon
4 gross revenues. It is a different tax bill.

5 Q. Okay. Who sent you that bill?

6 A. I believe it is the county. But I think
7 Mr. Bourassa probably could answer that better.

8 Q. So these are your real estate taxes?

9 A. Real property taxes are based upon income, or
10 revenues I should say.

11 Q. Do you have the documentation that you based
12 your 300,000 tax bill on?

13 A. With me, no, but I could provide it to you.

14 Q. Okay. Now, just to clarify, on this
15 documentation that you are looking at here, this is for
16 account U, looks like, 0000005, correct?

17 A. That's, yes.

18 Q. Okay.

19 A. And I am aware of U accounts and I am not really
20 clear as to what a U account is.

21 Q. Okay.

22 A. Once again I will lob it over to Mr. Bourassa.

23 Q. So when you included in your testimony that you
24 had 300,000 plus of unpaid taxes, it was based on a
25 report you received from whom?

1 A. From my comptroller saying that these are the
2 real property taxes we have to pay and that part of
3 those taxes are based upon revenue, because we have to
4 file a revenue report. Whether it is payable to the
5 county or to the state I am not sure.

6 Q. Okay. Thank you for that clarification.

7 Your Honor, can I move for the admission of
8 Exhibit R-2 and R-11?

9 ALJ RODDA: Well, let's start with R-2. Any
10 objections to R-2?

11 MR. SHAPIRO: No.

12 ALJ RODDA: R-2 is admitted.

13 MR. TORREY: No objection from Staff, Your
14 Honor.

15 (Exhibit No. R-2 was admitted into evidence.)

16 ALJ RODDA: I am still sort of unclear what R-11
17 is.

18 MR. SHAPIRO: I will join the judge's objection.

19 MS. WOOD: I think, you know, public records are
20 an exception. And this is clearly a public record,
21 account detail from Yuma County. It says Far West Water
22 & Sewer. It is what it is.

23 And if they have a bill that separates out and
24 shows 300,000 someplace, then Mr. Capestro has said that
25 he would provide that. But when we were looking for the

1 tax records on Yuma County's computerized system, this
2 is what came up. It doesn't say 300,000.

3 ALJ RODDA: Okay. So --

4 MR. SHAPIRO: Can -- sorry.

5 ALJ RODDA: So you are saying that this is, this
6 account is the Yuma County property tax record?

7 MS. WOOD: Correct. If you can look on page 1,
8 we pulled it at 5:15 on March 18th. That's what it
9 said.

10 ALJ RODDA: Is there objection to R-11?

11 MR. SHAPIRO: There is. I think there is an
12 inadequate foundation that has been laid. The only
13 facts we really have as to where this document came are
14 from representations of counsel. We don't know if it is
15 the complete tax picture. We don't have a witness that
16 really has seen this document before. He has testified
17 he is not really sure what it represents.

18 So I don't think this document has an adequate
19 foundation to go into evidence at this time. It may at
20 a later date when RUCO puts a different witness on, but
21 as of now I think it has a seriously inadequate
22 foundation.

23 ALJ RODDA: I am going to defer ruling on R-11.

24 Are you -- is Mr. Rigsby going to testify about
25 some --

1 MS. WOOD: We can do more research and do that
2 if you like. We can do some more, verify that we are
3 right, but this is what we found. So I can go through
4 Mr. Rigsby.

5 ALJ RODDA: But just, I think you said you would
6 provide the background, the background data for your
7 claim of the \$300,000. There must be a bill or
8 something that says that.

9 THE WITNESS: I know, I know that we are
10 required by a certain date to file an income report for
11 taxes. And I know that, I believe that's filed with the
12 state, with the ACC, I think.

13 ALJ RODDA: You must get an assessment just like
14 you do at home.

15 THE WITNESS: We do. So I can obviously get
16 that to you. And hopefully, if I have it e-mailed to
17 Mr. Shapiro's office, we could bring it in tomorrow.

18 No, your office is not here.

19 MR. SHAPIRO: We will attempt to get the
20 document as soon as we can and certainly before we
21 conclude any future hearing dates so it is part of the
22 record.

23 THE WITNESS: It should be easy enough for the
24 comptroller to send it over here. It is just a question
25 of printing it up.

1 ALJ RODDA: Luckily Mr. Shapiro does have an
2 office here.

3 MS. WOOD: Thank you, Mr. Capestro.

4 ALJ RODDA: Ms. Wood, you probably have
5 significant more.

6 MS. WOOD: Yes, I do.

7 ALJ RODDA: Let's take a break. Let's take ten
8 minutes.

9 (A recess ensued from 2:52 p.m. to 3:06 p.m.)

10 ALJ RODDA: Ms. Wood, we were in the middle of
11 your cross.

12 BY MS. WOOD:

13 Q. Mr. Capestro, you have in front of you the
14 application filed by Far West filed in July?

15 A. Yes.

16 Q. And we are going to have that marked as R-1.
17 You are familiar with this document because, as you said
18 before, you helped file it.

19 A. Yes.

20 Q. I want to clarify something. In the process of
21 filing this application you continue to refer to two
22 orders of the DEQ. There were originally two orders,
23 correct?

24 A. There were two orders. There was one in
25 March of '06, and then the second order in October of

1 '06 incorporated the first order but had different
2 language to it. And the first order only had the Del
3 Oro plant. The second order had the other plants.

4 Q. And --

5 A. And it did not include Marwood, I don't believe.

6 Q. In fact, Exhibit 3 to the financing application
7 is a copy of those two orders?

8 ALJ RODDA: I think we skipped a part. Did we
9 clarify that R-1 was a copy of the financing
10 application?

11 MS. WOOD: Yes.

12 ALJ RODDA: Okay. Sorry.

13 MS. WOOD: That's okay.

14 BY MS. WOOD:

15 Q. And the two consent orders are numbered P dash,
16 or actually by Docket No., P-18-06 and then docket
17 P-105-06?

18 A. Correct.

19 Q. Does your 06, which was executed by all the
20 parties in October of 2006, is that the order that
21 superceded the prior?

22 A. That's my understanding.

23 Q. In fact, if you look on page 3 of the P-105-06,
24 it actually says in paragraph j that it is the intent of
25 the parties that this consent order supercede or replace

1 the prior consent order entered on March 13th, 2006,
2 correct?

3 A. Correct.

4 Q. So this would be the guiding document with
5 regard to Far West's performance of ADEQ requirements?

6 A. That is correct.

7 Q. Okay.

8 A. With the exception of the fact that most of the
9 things that were required of Far West as set forth on
10 section e of page 8 had already been done by the time
11 this consent order was signed. It just, it just
12 incorporated actually what had been done.

13 Q. And on page 3 they actually document those
14 facts, correct, in paragraph g and h?

15 A. Page which?

16 Q. Page 3 of the order.

17 A. Page 3 does not say that it has already been
18 completed. It says it is superceded.

19 Q. Doesn't it say, paragraph h, recently, Far West
20 constructed a temporary 300,000 gallon per day
21 wastewater treatment plant to replace both the 77,000
22 gallon per day Santec and the 150,000 Clear Solutions
23 wastewater treatment plant at the Del Oro site?

24 A. I am sorry, I was looking at j. You are
25 absolutely correct.

1 Q. Okay.

2 A. Thank you.

3 Q. Thank you. And then next line, Far West began
4 operations of the new wastewater treatment plant and
5 currently operates the wastewater treatment plant at an
6 actual flow capacity of approximately 250,000 gallons
7 per day, that's correct?

8 A. That is correct.

9 Q. And the goal was then to move apparently to a
10 495,000 gallon per day wastewater treatment plant at
11 some future date?

12 A. Yes and no.

13 Q. Okay.

14 A. The goal was to make this plant of 300,000 a
15 permanent plant. It is only a temporary plant. It has
16 no redundancy to it so that, if you ever hit your
17 300,000 or if a pump goes out, it won't work. And the
18 tankage itself was too small for the 300,000. That's
19 why it is called constructed to 300,000 temporary plant.

20 So, yes, ADEQ wanted us to go to 495. No, the
21 main reason was not to go to 495. The main reason was
22 to meet the specifications of ADEQ because the 300,000
23 wastewater treatment plant, while it is, it does a good
24 job, it cannot consistently meet all the requirements
25 for ADEQ for nitrate removal and the like.

1 Q. And the plan was, once you get the 300, excuse
2 me, the 495 in process which you replied for at time,
3 the goal was to move this one to Seasons?

4 A. Seasons.

5 Q. Okay.

6 A. Because Seasons is only 150,000 and a 300,000
7 wastewater treatment plant will easily handle the 150.
8 It wouldn't cost you any difference between a 150 and a
9 300,000. It is basically the same type of process.

10 Q. Thank you for that additional information.

11 For the purposes of defining your
12 responsibilities to ADEQ at this point, it would be
13 within the scope of that one consent order, correct?

14 MR. SHAPIRO: I am going to object. That states
15 or attempts to state a legal conclusion or call for a
16 legal conclusion as to the effect of this consent on the
17 company.

18 ALJ RODDA: Can you read back her question for
19 me.

20 (The record was read by the reporter as
21 requested.)

22 MS. WOOD: I would like to point out
23 Mr. Capestro is a lawyer and I think he is contending
24 that he represented them in that capacity.

25 MR. SHAPIRO: But he is not here as a lawyer on

1 behalf of the company. And the responsibility of any
2 utility to meet the obligations of ADEQ are set forth by
3 Arizona law, which is not included in this consent
4 order.

5 ALJ RODDA: I am sorry, say that last part
6 again.

7 MR. SHAPIRO: I said the responsibility of any
8 public service corporation to meet ADEQ regulations
9 exist outside of this consent order and permits,
10 approvals, rules, et cetera. So to characterize this as
11 the singular document by which a public service
12 corporation is responsible to ADEQ, I think, is
13 incorrect.

14 And I don't think it is appropriate to ask for a
15 legal conclusion from this witness when he is not here
16 in that capacity.

17 MS. WOOD: If I could be heard, Your Honor. In
18 his testimony he said he is compelled to comply with two
19 ADEQ orders. What I am trying to clarify is one
20 supercedes the other so essentially they are bound by
21 one.

22 ALJ RODDA: I understand, but the scope of your
23 question was broader than that and I think that is what
24 Mr. Shapiro is objecting to.

25 MS. WOOD: Should I rephrase?

1 MR. SHAPIRO: We will stipulate --

2 ALJ RODDA: I think that would be helpful.

3 MS. WOOD: Yes.

4 BY MS. WOOD:

5 Q. Would you agree, well -- let me try --

6 MR. SHAPIRO: Judge, the company will stipulate
7 that there is only one consent order in effect, as this
8 one superceded the prior one.

9 MS. WOOD: That's all I am --

10 MR. SHAPIRO: When we referred to consent
11 orders, we were referring to both of them. But Ms. Wood
12 is correct, this today is the one consent order that
13 governs the one that Mr. Capestro signed October of
14 2006.

15 MS. WOOD: I just wanted to make sure there
16 wasn't another one I didn't know about.

17 MR. SHAPIRO: Appreciate the clarification.

18 THE WITNESS: No, there is not.

19 ALJ RODDA: Thank you. Because I thought we
20 already established that.

21 BY MS. WOOD:

22 Q. Mr. Capestro, if the company was suffering a
23 cash flow problem why did they in 2007 and '8 increase
24 salaries by 195,000?

25 A. Quite frankly, I don't think we did increase

1 salaries by 195,000. You will have to ask Mr. Bourassa
2 for his breakdown of that. If you are talking about
3 filling holes that we had, finding more people for jobs
4 that had been vacated, that's a different story.

5 Q. So from your -- you say you are in charge of
6 approval of hiring, firing, salary making, but you don't
7 believe it is 195?

8 A. Well --

9 Q. I should say more clearly, 195,000.

10 A. You will have to ask Mr. Bourassa how he came up
11 with that number. What we do do is we do have merit
12 increases where people change from, you know, \$8 to \$9
13 an hour. We did fill some positions that were empty
14 that had to be replaced. We did try to reduce overtime.
15 And included in those salaries, I believe, are the
16 salaries of the people that are driving the effluent
17 trucks to move that.

18 So whether or not we increased people's salaries
19 or not, I would have to have a complete breakdown of it.
20 I do know that on production we sent what raises had
21 been given in the last year.

22 Q. I am just going to ask you the following
23 question. Would you agree subject to check that there
24 is \$195,000 increase in wages and salaries in the
25 interim rate application schedules filed by

1 Mr. Bourassa?

2 A. I haven't confirmed those schedules as to that.
3 I am not the appropriate witness to talk about the
4 increases in salaries that way. I did produce to RUCO
5 all increases there were in that year.

6 Q. Okay. Thank you so much, Mr. Capestro.

7 Do you have a copy of the interim application in
8 front of you?

9 A. Of the which application?

10 Q. The interim rate application that you filed.

11 A. Did you produce it?

12 Q. I am asking if you have a copy of your own. If
13 you don't, we can provide you a copy.

14 A. No, I don't have one. I didn't bring one up
15 with me.

16 ALJ RODDA: Do you have one that is marked?
17 Were you going to introduce one, Mr. Shapiro?

18 MR. SHAPIRO: I wasn't intending to introduce a
19 copy of the application, no.

20 ALJ RODDA: Okay.

21 MS. WOOD: Your Honor, may I approach the
22 witness? Because I didn't bring extra copies since it
23 is already on E-Docket.

24 ALJ RODDA: Okay.

25 BY MS. WOOD:

1 Q. I am going to show you, Mr. Capestro, what has
2 been entered on E-Docket as the Bourassa report.

3 A. Correct.

4 Q. And his schedules. And then under the emergency
5 application for interim rates and charges schedules for
6 Mr. Bourassa, on Schedule C-1, do you see under, I think
7 it is, the category salary and wages?

8 A. Yes.

9 Q. It was at 674,300 in the test year. And then
10 there is an adjustment of 195,821.

11 A. I see that.

12 Q. Okay. What is that for?

13 A. You have to ask Mr. Bourassa.

14 Q. So you are in the habit of approving rates and
15 increases of your employees but you don't know what they
16 are for?

17 A. That's not my answer. This is a schedule that
18 Mr. Bourassa put together.

19 Q. Okay. So you hired Mr. Bourassa to provide you
20 with testimony and you don't know what it is he said
21 with regard to salary and wages when it is your job --

22 MR. SHAPIRO: Objection; argumentative.

23 MS. WOOD: If I could have a moment to phrase
24 the question first before all the lawyers in the room
25 object.

1 THE WITNESS: Including me?

2 BY MS. WOOD:

3 Q. Do you have the obligation to oversee salary,
4 wages that type of thing? That was your testimony,
5 correct?

6 A. Yes, I am.

7 Q. Okay. So do you know what it is you give your
8 employees?

9 A. Pretty much so. But that says adjustment; it
10 doesn't say increase.

11 Q. Okay. Thank you.

12 Oh, is it a negative increase -- is it a
13 decrease or increase?

14 A. Pardon me?

15 Q. Is it an increase or decrease, do you know that?

16 A. Wages from over one year to the next?

17 Q. Yes.

18 A. There was a decrease between '06 and '07. There
19 was an increase in '08 because we had to haul effluent
20 and we hired additional personnel because we had too
21 much overtime.

22 Q. Okay. How much do you pay each year for hauling
23 of effluent from your facility Palm Shadows to City of
24 Yuma?

25 A. Last year the total cost was \$501,000. That

1 included the hauling charges, the trucks, the fuel, and
2 the charges by the City of Yuma.

3 Q. Okay.

4 ALJ RODDA: When you say last year, you mean the
5 calendar year 2008?

6 THE WITNESS: That is correct.

7 ALJ RODDA: Okay.

8 BY MS. WOOD:

9 Q. What is the original cost for or estimate for
10 completing Palm Shadows?

11 A. Palm Shadows itself is, the only thing that's
12 left over there to do is the lift station.

13 Q. Okay. How much money have you spent on Palm
14 Shadows to date?

15 A. For what?

16 Q. To complete the force main.

17 A. Okay. The force main itself?

18 Q. Uh-huh.

19 A. I don't have the figure in front of me. I know
20 that we, the company, spent approximately \$500,000 for
21 pipe to move the effluent. I know that it paid for
22 blocks, had paid per foot to move there. I think that
23 it is either one four or one seven.

24 Q. Is it million?

25 A. That's correct. It is a long distance.

1 Q. Who did the construction for, contract for doing
2 that work?

3 A. H&S Developers.

4 Q. H&S Developers? And that's the affiliated
5 company?

6 A. That is correct.

7 Q. What are the contracts that H&S Developers have
8 in completing the improvements to the water and sewer
9 division?

10 ALJ RODDA: I am sorry. Your voice sort of
11 trails off at the end.

12 MS. WOOD: I apologize.

13 BY MS. WOOD:

14 Q. What other contracts did H&S have with Far West
15 to complete the sewer improvements and/or water?

16 A. Pardon me?

17 Q. And/or water, if there were things done for the
18 water division.

19 A. Okay. H&S built one building at Del Oro and two
20 at Section 14.

21 Q. How much money was involved in the agreement to
22 build the Del Oro property?

23 A. I don't have that in front of me.

24 ALJ RODDA: When you say you don't have it in
25 front of you, do you have it in the room? Back in Yuma?

1 Does Mr. Bourassa have it?

2 THE WITNESS: I am sure that I have it either in
3 the room or here, probably in the room, because I asked
4 for the breakdown of what the contracts were for that.
5 And I could, you know, obtain that and have the numbers
6 for you tomorrow. But I do have the numbers. I just
7 don't have them off the top of my head.

8 ALJ RODDA: These are all questions I would be
9 asking you if she wasn't asking you.

10 THE WITNESS: Sure. And it doesn't look like
11 the Staff is going to finish today, so I will be on the
12 stand tomorrow and I will bring that with me. But I do
13 have the amounts.

14 It is a, it is a small part of the overall thing
15 because most of it was equipment we purchased from
16 outside and then we had these two big contractors doing
17 most of the construction.

18 ALJ RODDA: Okay.

19 BY MS. WOOD:

20 Q. Would --

21 A. And -- go ahead.

22 Q. I apologize. I didn't mean to interrupt. I
23 will wait until you are finished.

24 ALJ RODDA: Go ahead.

25 THE WITNESS: Take your time.

1 BY MS. WOOD:

2 Q. Would the information that you are talking about
3 be within the document called the updated sewer project
4 budget that you provided last week to RUCO?

5 A. The actual cost of the buildings, I doubt it,
6 that it is embedded in there. Those budgets were put
7 together by Coriolis and they did various line items.
8 Whether or not it is there I don't know. All I know is
9 that H&S did each of them up by competitive bid.

10 ALJ RODDA: You have used this name. I think
11 you are saying Coriolis.

12 THE WITNESS: Coriolis, C-O, C-O-R-I-O-L-I-S.
13 That's the company that has the engineering and the
14 management company. They are out of Missouri.

15 ALJ RODDA: And so this did, just so I
16 understand, they did all the engineering plans and now
17 they are managing the construction of it?

18 THE WITNESS: They are managing the
19 construction. They are not doing the actual
20 construction themselves.

21 ALJ RODDA: Okay.

22 THE WITNESS: They, the engineering part of it,
23 did all the engineering. The management part went out
24 for competitive bids. They gave the parameters for each
25 bid. They talked about what was in the construction

1 request. And like the Zenon plant, they went to Canada
2 and on the east coast and several other places and
3 presented us with the bids and the reasons why certain
4 bids were better than others.

5 ALJ RODDA: Okay. But you were the ultimate
6 decider or the decision maker on what bid would be
7 accepted or would they do that?

8 THE WITNESS: It would have to be signed by the
9 president of the company. But we always, we followed
10 their recommendations.

11 ALJ RODDA: Okay. I am sorry to interrupt you.

12 MS. WOOD: No, that's quite all right.

13 BY MS. WOOD:

14 Q. So just to recap, there was a building at Del
15 Oro?

16 A. One building at Del Oro.

17 Q. Were there any buildings built at Del Oro other
18 than the one you built?

19 A. There was already a building there that's being
20 used.

21 Q. None other constructed?

22 A. No.

23 Q. And how about on Section 14?

24 A. Two buildings.

25 Q. Were there any other buildings constructed other

1 than two you built?

2 A. No. Well, excuse me. There was one that was a
3 small building for blowers but it is not encased or
4 anything. And I don't know if that was under contract
5 with H&S or directly with the subcontractor. H&S does
6 also, when necessary, do dirt work when they need to
7 move the dirt around and be able to have a hole there
8 for, you know, whether or not it is a tank or something
9 else like that.

10 ALJ RODDA: I am sorry. Your voice trails off,
11 too.

12 THE WITNESS: I am sorry. I was trying to look
13 at her.

14 When you have to have a hole to put the tankage
15 in, H&S most of the time would come in with their big
16 equipment to be able to dig up, be prepared for it.

17 MS. WOOD: Okay. I am going to move on, if I
18 may.

19 ALJ RODDA: I am sorry. Commissioner Newman has
20 a question.

21 MS. WOOD: I apologize.

22 COM. NEWMAN: Excuse me. I was going to wait
23 until everybody had a chance to ask questions, but I am
24 just going to interrupt right now because I am, I am
25 trying to understand the relationship between H&S and

1 the sewer and the water company and Far West and any
2 other companies that might be under your jurisdiction or
3 your direction.

4 THE WITNESS: Okay.

5 COM. NEWMAN: So. Would you just give me a
6 general description of, when you said H&S built
7 buildings, H&S moved dirt, are -- and, you know, tell me
8 about your relationship between H&S and Far West, number
9 one. And then I am going to ask a whole series of
10 questions probably tomorrow. Just give me a preview of
11 other companies that are under your control or related
12 in any way to this Far West company.

13 THE WITNESS: Okay. H&S Developers, the
14 president and vice president are Paula Capestro and
15 Sandy Braden. 69 percent of the stock is owned by
16 Dorothy Schechert, their mother.

17 As far as Far West is concerned, it is a
18 separate company. Its stock is owned by Paula Capestro
19 and Sandy Braden. They purchased the stock that their
20 mother had in that company when everything started going
21 the way it was. No sense for a 90-year-old woman to
22 have that exposure or liability.

23 The main thing that H&S Developers does is move
24 dirt. It puts in underground, wet utilities. It puts
25 in developments and the like.

1 In one of our productions of documents I
2 itemized each and every development that H&S had done
3 versus the ones that other developers have completed.
4 And most of H&S Developers were all on the old septic
5 tanks. The ones after that were taken care of by the
6 Marwood plant. If you go over to the Mesa Del Sol Golf
7 Course, that's two people, Eddie Lou and Mesa Del Sol,
8 Incorporated, and it is the development group. You go
9 south of the freeway --

10 COM. NEWMAN: And the development group is?

11 THE WITNESS: The development group used to be
12 Scott Spencer. Now it is Elliott Homes out of
13 Sacramento.

14 COM. NEWMAN: And how are they related to all
15 the companies, to H&S?

16 THE WITNESS: No relationship at all.

17 COM. NEWMAN: And they are a separate company?

18 THE WITNESS: Separate company, no relationship
19 to us. Just Mr. Spencer has been around for awhile and
20 Mr. Elliot has been there three years.

21 COM. NEWMAN: It was alleged during the public
22 hearings -- and I will continue this tomorrow.
23 Hopefully I will be able to come. I am sorry to
24 interrupt but I am getting confused in this line of
25 questioning about why H&S is involved and how it seems

1 things are.

2 It was alleged during the public testimony, and
3 I am not countenancing the absolute truth for this, it
4 was just alleged during the public testimony that
5 somehow there were other companies that were benefiting
6 from the improvement in the plants, the \$20 million
7 loan, the other loan, other major loan. And that was
8 one of the things that people felt aggrieved about. And
9 when I heard that, I get, you know, I accepted it for
10 public testimony.

11 How would you respond on the record to the
12 allegations that there were companies under the control
13 of the family that had a perceived benefit that didn't
14 necessarily go to ratepayers?

15 THE WITNESS: Well, I listened to the comment.
16 And somehow every time a new development goes up, they
17 believe that it is part of us or the affiliated company.

18 We right now have two developments, and that's
19 it. One is the Ravines, of which we have sold 17 homes
20 since this consent order came in. And the other is
21 Rancho Encantado. That has, you know, five lots that
22 have been sold, and that's it, and there is 91 lots in
23 that subdivision.

24 ALJ RODDA: But you have other developments
25 built out, don't you?

1 THE WITNESS: Previously, and those developments
2 mostly were with Marwood or Section 14.

3 If other developers were not there, we would not
4 need anything more than what we did at Section 14
5 already or at Marwood, and I mean before the consent
6 order.

7 Anything at Palm Shadows, and that's three
8 different developers, we have nothing to do with any,
9 financially have anything to do. We know the people.
10 And one of them, Mr. Jacobson, was an engineer for us
11 for awhile. But that's his own development. That's a
12 separate company. We have no financial stake in that.
13 We have no financial stake in Mesa Del Sol. We have no
14 financial stake in Seasons. We have no financial stake
15 in Del Rey or Royale.

16 ALJ RODDA: When you are saying names, those are
17 names of developments?

18 THE WITNESS: Those are the names of the various
19 sewer plants that we have with the surrounding
20 developments.

21 ALJ RODDA: All right. You have an interest in
22 the sewer plants?

23 THE WITNESS: We have an interest in the sewer
24 plant. We have no interest in those developments.

25 ALJ RODDA: Okay.

1 THE WITNESS: We, we, Hank Schechert got there
2 very early. He purchased a grocery store from somebody
3 else years ago. He built a hardware store. After he
4 died, we built a mini mart to service the community.
5 When we had to do something with the effluent from the
6 Marwood plant, we built a small little three par course,
7 nine holes. And then when they increased the effluent
8 in Marwood, they moved it to another set nine hole golf
9 course.

10 Golf courses don't make any money; they lose.
11 They lose a lot of money. And when the Section 14 plant
12 was put on line, they built a golf course there. It is
13 there for the purpose of taking the effluent. It has to
14 go somewhere.

15 COM. NEWMAN: Could I just stop you right there.
16 Sometimes golf courses in real estate communities are
17 constructed because they will become future
18 developments. And I know that from a lot of experience
19 in the real estate community, in the real estate world.

20 So these, even though the golf courses are not
21 making money, they are sitting there waiting for future
22 development, aren't they?

23 THE WITNESS: They are waiting there for future
24 developments. But in the meantime, these golf courses
25 take about, and during the summer, about 2 million

1 gallons a day of water. And this plant produces 150,000
2 gallons a day. So, you know, it is a long time getting
3 there.

4 Whether or not -- H&S does own land around the
5 golf courses. It has sold off other parts of land. H&S
6 intends that any new development that it puts in it pays
7 its fair share for the off-site capacity. We have, for
8 the -- we have developed one development, which was Las
9 Barrancas I which was sold to the Elliott in bulk. And
10 part of that was that H&S did pay for the off-site
11 facilities, its share, its proportionate share based on
12 gallonages. So it is not as if it didn't pay for it.
13 Like Marwood was paid for and it is not part of our rate
14 base, Palm Shadows is not part of the rate base.

15 COM. NEWMAN: One follow-up question and I will
16 stop. I just wanted to be able to think about this
17 tonight before I ask questions after everyone is done
18 because I am trying to figure out the relationship
19 between all these companies. And I hope in the main
20 case or emergency matter we will be able to figure it
21 out before it is all through. That's sort of an
22 allusion to Staff.

23 THE WITNESS: Sure.

24 COM. NEWMAN: You stated, and I wasn't expecting
25 you to state anything like this, I think you said, and

1 correct me if I am wrong, something about when Paula's
2 mom was looking at a lot of liability because things
3 weren't going very well that you unincorporated,
4 reincorporated. Or did I mishear you? And just tell me
5 what you said again before I give you the follow-up
6 question. I am not going to question you -- you said
7 something about reincorporating to protect her, I would
8 call it, corpus, her interest. Is what you said?

9 THE WITNESS: No.

10 COM. NEWMAN: No, okay.

11 THE WITNESS: I must have misspoke.

12 COM. NEWMAN: Okay. Well, we will check the
13 record on it.

14 THE WITNESS: What I did, what I did want to say
15 is that she had stock in the corporation of Far West
16 which she sold to Paula Capestro and Sandy Braden.

17 COM. NEWMAN: Right.

18 THE WITNESS: And I said that was at a time when
19 we had the death case.

20 COM. NEWMAN: Right. And you said something
21 about for liability. Didn't you say something for
22 liability reasons? I think I heard liability reasons.

23 THE WITNESS: If I said that it was just
24 something too much for a woman of her age to be involved
25 in. Since the previous president had been charged with

1 negligent homicide, two counts, and he was convicted of
2 two counts of negligent homicide, she said, you know, I
3 am not there day to day, I really would like to give up
4 my shares, is what I was trying to allude to. And if I
5 misstated it, no, it had nothing to do with
6 incorporation or reincorporation or anything else. And
7 that's what I was trying to say.

8 COM. NEWMAN: Okay. Well, I will just leave it
9 at that for right now. And I am sorry I jumped in. It
10 just, there is a long history here that I still am
11 tangled with.

12 ALJ RODDA: Okay. Thank you.

13 Ms. Wood.

14 BY MS. WOOD:

15 Q. Mr. Capestro, H&S or its affiliates owned golf
16 courses; you just explained that, correct?

17 A. That's correct. It owned two nine hole and one
18 18 hole.

19 Q. And the names of those are?

20 A. Par 3, the Executive, and Las Barrancas.

21 Q. So is it three golf courses?

22 A. Two nine holes and one 18 hole.

23 Q. Okay.

24 ALJ RODDA: What the last one? I am sorry.

25 THE WITNESS: Pardon me?

1 ALJ RODDA: What was the last one?

2 THE WITNESS: Las Barrancas.

3 ALJ RODDA: Las Barrancas.

4 BY MS. WOOD:

5 Q. I am going to give you what I am going to
6 identify as Exhibit R-5, have you look at it for me.

7 (Brief pause.)

8 BY MS. WOOD:

9 Q. Now, the first page of this document is a face
10 sheet of your computer website for those three golf
11 courses; that is correct, is it not?

12 A. Correct.

13 Q. Okay.

14 ALJ RODDA: When you say your web page -- or say
15 that again.

16 MS. WOOD: Let me clarify.

17 BY MS. WOOD:

18 Q. This is the web page for, I guess is it H -- it
19 says golf in The Foothills, correct?

20 A. It is, that's correct.

21 Q. And it is affiliated with the website that says
22 GoToYuma.com, correct?

23 A. Yes.

24 Q. And GoToYuma.com is a website that is maintained
25 by Far West Water and H&S, is that correct?

1 A. I believe so.

2 Q. Thank you.

3 A. Our IT guys set it up.

4 Q. And the second page of this exhibit is a copy of
5 the most -- well, you tell me if -- I guess this is the
6 read date of January 7th, 2009 for the Par 3 and
7 Executive golf courses, is that correct?

8 A. It is not done as a read.

9 Q. Tell me about that.

10 A. The Marwood and Section 14 plants do a daily
11 report of effluent. Far West assumes that every bit of
12 that effluent goes into either the pond for Marwood or
13 the pond for Section 14. Those ponds are owned by one
14 of the golf courses. And what they do is they add up
15 all of the effluent that has been done in that month.

16 Like this one here has \$8,178 -- I don't know
17 what period of time that was for, whether or not it was
18 for a month or what -- and then adds it to the bill.

19 Q. Okay. Just before the column that says total
20 current charges, 8,178, there is a header on the
21 left-hand side that says December 2008 effluent,
22 8,178,000 gallons, disconnect notice, correct?

23 A. That's what it says.

24 Q. All right. And the sum total amount due
25 combining the total current charges for the previous

1 balance is \$136,956.60, correct?

2 A. Correct.

3 Q. And that's for Par 3 and Executive golf courses,
4 correct?

5 A. That is correct.

6 Q. Now, last year, in December 2007, on page 3 of
7 the exhibit, is an additional bill. And it says
8 December 2007 effluent, 8,361,000 gallons, disconnect
9 notice. In addition to the current charges, the
10 previous balance and the total amount due is \$61,677,
11 correct?

12 A. Correct.

13 Q. I was looking at this, and would it appear to
14 you that you haven't paid your bill for some period of
15 time?

16 A. That's what it looks like.

17 ALJ RODDA: I am going to ask you, though, when
18 you say you, can you use the name of the company instead
19 of you, because --

20 MS. WOOD: Sure.

21 ALJ RODDA: -- he has several --

22 BY MS. WOOD:

23 Q. Does it appear to you, is this H&S development
24 that did not pay its effluent bill to Far West Water &
25 Sewer?

1 A. It is actually a bill to the golf course itself.

2 Q. Which is owned by?

3 A. H&S Developers.

4 Q. Thank you.

5 And now pages, the next two pages of the
6 exhibit, this is a bill to Las Barrancas Golf Course.

7 Las Barrancas is owned by H&S development?

8 A. That's correct.

9 Q. And this is a December 2008 effluent, 2,658,000
10 gallons, disconnect notice. And it reflects a total
11 amount due \$55,314.60, correct?

12 A. That's correct.

13 Q. And that includes past due charges of \$52,656.60
14 plus the current charges?

15 A. That's what it says.

16 Q. Now, in December of the year prior, there was a
17 bill for Las Barrancas, which is owned by H&S, for
18 December 2007 effluent for 3,948,000 gallons. It is a
19 disconnect notice. In addition to the current charges
20 of approximately 4,000 was a past due balance for a sum
21 total of 25,971.60, correct?

22 A. That's what it says.

23 Q. Do you know this to be true or not?

24 A. I don't handle these bills but it looks right.

25 Q. Okay. Now, would you admit that it would

1 improve the cash flow of Far West Water & Sewer if H&S
2 would pay its irrigation bills?

3 A. Then Far West would have to pay its bills to
4 H&S, which H&S goes out almost every night to help
5 repair water breaks or anything else that goes wrong
6 that's underground. It takes its backhoes out there and
7 the like. And Far West didn't have the money to pay H&S
8 for its daily repair jobs. And I am going to tell you
9 that it would cost more to have a third party come out
10 there and do the repairs.

11 And so they, what they do is they have an
12 account payable versus an account receivable. And you
13 could see that in the financials about the fact that
14 part of the debt, not this debt here because we are
15 talking about when we are talking about the amounts that
16 are owed for the billing, but if they pay it the only
17 thing they would be doing is exchanging checks. And
18 probably Far West would owe more to H&S than H&S owes to
19 Far West. It is just a question on how they are going
20 to do it.

21 Q. Well, I understand your notion. But the
22 question I asked you is: On the financials, the cash
23 flow of this company would improve if you, if H&S paid
24 its irrigation bill?

25 A. I don't think so. It is listed there as an

1 account receivable. It doesn't really affect the cash
2 flow.

3 What would be a detriment to the cash flow is if
4 Far West paid every type of repair bill that H&S does
5 for it. It is huge. It couldn't function unless it had
6 some credit for people, whether or not it is from
7 Priority Well or from H&S or it is Rob's Backhoe or any
8 of the others we use. Some people don't give as much
9 credit, like Agtec, when they haul things. And they
10 were charging a huge amount.

11 So it is a question of cash flow, yes. And I
12 guess what you are saying is that one entity should pay
13 its bill but the other shouldn't. And, you know, you
14 could hire more employees to run backhoes, which would
15 probably be a higher expense, and teach them how to do
16 use a backhoe and have H&S own backhoes. But, quite
17 frankly, you would rather have a qualified operator run
18 a backhoe that does it every single day, not just
19 somebody from a water company that gets on one every so
20 often.

21 Q. Now, would you acknowledge that Section 14 has
22 been engineered for 2 million gallons per day?

23 A. No.

24 Q. No.

25 A. It has been engineered for a million three at

1 the present time. It is only allowed to go to 681,000
2 for the first year until the ADEQ determines whether or
3 not the aquifer can handle the flow.

4 A vadoses well has been built to take care of
5 part of the flow. At the end of the first year, ADEQ is
6 going to determine what type of flows it can take and
7 hopefully it will go to a million three. There is an
8 engineering report or an application to go to 2 million.
9 That has not yet been approved by ADEQ and it is
10 somewhere up there in the mil.

11 Q. How much have you paid for engineering fees for
12 the expansion from 1.3 to 2 mil?

13 A. \$420,000 for engineering fees. The question is
14 has it been engineered for it at the present time or it
15 has an application. Part of those fees is making any
16 changes that ADEQ requires it to do and continue the
17 engineering.

18 Q. Okay.

19 A. So as the plant sits there right now it is
20 engineered for a million three, but we cannot put enough
21 cassettes in there for a million three until ADEQ talks
22 about that. And a cassette is what they have with the
23 membrane filtration.

24 Q. I am going to give you what I have marked as R-6
25 and I am going to ask you to identify that for me.

1 (Brief pause.)

2 BY MS. WOOD:

3 Q. Do you recognize this document, Mr. Capestro?

4 A. Yes, I do.

5 Q. What is it?

6 A. That's the budget prepared by Coriolis
7 Engineering.

8 Q. Okay. And did you provide this to RUCO last
9 week in response to a data request?

10 A. Yes, I did.

11 Q. Okay. Can you look on the first page under the
12 category -- actually I am going to ask you, I think it
13 is on, on page 1, under the section where it says
14 engineering sewer.

15 A. Yes.

16 Q. Okay. It says Section 14, expansion to
17 2 million gallons per day?

18 A. Correct.

19 Q. Okay. Under the contract amount it says
20 420,000?

21 A. Correct.

22 Q. What is the status of that completion?

23 A. Of what?

24 Q. Whatever the column that you have compiled.

25 A. The engineering, the APP has been completed. It

1 has been signed. Whether or not it has been forwarded
2 to ADEQ at this time I do not know. That would be sent
3 by Coriolis Engineering. We have not received any
4 notice that it has been substantially complete or before
5 it goes on to the engineering phase with ADEQ.

6 Q. Did you pay for the \$420,000 yet?

7 A. Yes.

8 Q. Okay. Now, one of the projects that you are
9 doing is the Del Oro permanent wastewater treatment
10 plant, correct?

11 A. That is correct.

12 Q. And this budget is on page 3 of this document.
13 On page 1 you indicate that it is 80 percent completed.
14 What portions of this contract have not yet been
15 performed?

16 A. Since February, I think you are closer to
17 95 percent completed of phase one. There are two
18 phases, phase one and phase two, on Del Oro.

19 Q. Okay. Phase one is how many gallons?

20 A. Phase one I cannot tell you the gallonage,
21 because phase one, at the end of phase one then the
22 plant that is there that goes to Seasons will be moved
23 and then there is room for additional tankage and the
24 like.

25 Q. Are we talking about Del Oro?

1 A. I am talking about Del Oro. The temporary plant
2 that's there has to be moved.

3 Q. Okay.

4 A. And they can't -- it is just a very small
5 footprint. And so on that footprint they have to wait
6 for that plant to be moved to be able to complete
7 construction of what is under the permit for 495.

8 Q. Okay. So under the Del Oro, you are waiting on
9 completion of Seasons so you can move that plant over?

10 A. No. What I am waiting on is, on this particular
11 plant, is for Zenon to agree to come and turn it on.

12 ALJ RODDA: Turn on what, for what plant?

13 THE WITNESS: The Del Oro plant, the membrane
14 filtration, they have to be there when we install the
15 membranes and make sure that it is functioning properly.
16 They will send out people from Canada to do it. And
17 they won't do that without a payment of \$420,000.

18 ALJ RODDA: I don't understand what you are
19 saying at all about having to wait to move it.

20 THE WITNESS: Oh. There is a package, there is
21 a temporary plant that's totally encased. It is the
22 membrane filtration of one part and it is also the
23 brains with the SCADA units and everything else that
24 reports to Zenon in Canada and reports back how it is
25 happening. Plus it has recycling plants and everything

1 else. They are on skids. Those will be moved, those
2 two particular parts will be moved to Section 14 once
3 the plant that's in there, that's the new plant with the
4 new tankage, is on line.

5 ALJ RODDA: The new plant for Del Oro?

6 THE WITNESS: For Del Oro, that's correct.

7 ALJ RODDA: So you are waiting for that new
8 plant, that's what you are waiting to be turned on or
9 that needs to be --

10 THE WITNESS: I am waiting for us to be able to
11 treat influent at the new plant, which I cannot do
12 without the assistance of Zenon.

13 ALJ RODDA: Okay. So once, to recap, once you
14 can turn on, once Zenon can turn that part of the plant
15 on, you can move the other part of the plant to
16 Section 14?

17 THE WITNESS: To Seasons.

18 ALJ RODDA: To Seasons?

19 THE WITNESS: And then we will have some more
20 tankage to put in there and the like. And then the next
21 phase of Del Oro will go in.

22 ALJ RODDA: All right. So that's all phase one
23 of Del Oro. After you do all that --

24 THE WITNESS: Then --

25 ALJ RODDA: -- then it is phase two of Del Oro?

1 THE WITNESS: That's correct. But it is all
2 within this same budget.

3 ALJ RODDA: Okay.

4 BY MS. WOOD:

5 Q. Once you complete the construction of Del Oro,
6 its capacity is 495,000 gallons per day?

7 A. That is correct.

8 Q. Does any portion of that include excess capacity
9 for future development?

10 A. I believe that when you get to the point you are
11 somewhere close to 70 or 75 percent of capacity, and
12 that once you get up to 80 or 85 capacity, you have to
13 engineer for more capacity according to ADEQ rules.

14 ALJ RODDA: But does that answer the question?
15 I don't think so.

16 COM. NEWMAN: No.

17 THE WITNESS: Is it engineered for excess
18 capacity? Technically it --

19 ALJ RODDA: How much capacity do you need there
20 now to serve what is there now, what development is
21 there now?

22 THE WITNESS: For the developments that are
23 there right now? I had it in my figures. It is over
24 300,000 gallon a day.

25 ALJ RODDA: So, but it is close to 300,000?

1 THE WITNESS: Correct.

2 ALJ RODDA: I mean you could say, over 300,000,
3 that could be 600,000.

4 THE WITNESS: It is close to 300,000. Once I
5 get to 300,000, then I have to have capacity for more
6 because I can't just leave it within at capacity or with
7 90 percent of capacity.

8 ALJ RODDA: But my question was, I understand
9 that once you reach a certain percentage, 75 or
10 80 percent, you have to start expanding --

11 THE WITNESS: Correct.

12 ALJ RODDA: -- right, but how much, let's say it
13 is static, let's say there is the development that's
14 there now that is served by this Del Oro plant, how much
15 capacity do you need to serve that reliably?

16 THE WITNESS: To everybody that's there or --

17 ALJ RODDA: Yes.

18 THE WITNESS: -- the ones that already have
19 their lines in and everything else but want to hook up?

20 ALJ RODDA: Tell me both ways.

21 THE WITNESS: Okay. Right now, I believe that
22 we are running at a peak of around 265,000 gallons a day
23 with what is there. And so if you take a look at
24 300,000 gallons a day, we are at least 80 percent when
25 we do that. If you look at the other departments that

1 are there with lines in, you would be over 300,000.

2 ALJ RODDA: A lot over?

3 THE WITNESS: Probably 330.

4 ALJ RODDA: That may or may not have been what
5 Ms. Wood asked you, so...

6 THE WITNESS: If we are doing it based upon
7 actual flows versus committed flows, it is a different
8 story. When these developments go in, they say our flow
9 is the following. And then we have to go back and see
10 which each engineering place was to come up with those
11 total flows. I am just talking about the actual flows
12 at the present time.

13 ALJ RODDA: Okay. Are actual flows usually
14 less --

15 THE WITNESS: Actual flows are usually less than
16 the engineered flows. Like the City of Yuma requires
17 450 gallons per day per household. The last engineer
18 that I talked to said that he was able to do something
19 in the county for 360 gallons per day per house.

20 And for our engineering, ADEQ mandated 187.2
21 based upon 80 gallons per person and 2.34 people per
22 household. So if we are going to commit to bigger
23 households or the like, then we need to have more
24 capacity there.

25 ALJ RODDA: Okay.

1 BY MS. WOOD:

2 Q. So if I were to summarize what you just said,
3 the actual flows today are about 265 million gallons per
4 day?

5 A. 265,000.

6 Q. 265,000, sorry. That figure is really high.
7 265,000 gallons per day?

8 A. That's correct.

9 Q. And you have it engineered for 495,000 gallons
10 per day, correct?

11 A. Correct.

12 Q. Would it be fair to say then that the 400, the
13 difference between the 495,000 gallons per day and the
14 265 gallons per day represents excess capacity?

15 A. No.

16 Q. Okay. Why not?

17 A. Because you are talking about actual flows
18 versus design flows. And you are required both by the
19 county and the state to meet those design flows.

20 If you have a subdivision that has a design
21 flow, say, of 2,000 gallons a day, and it in turn really
22 uses only 1,000 gallons per day, the only way you get
23 around it is to have the county issue a certificate
24 saying you are not going to use that much and then go to
25 ADEQ and see if ADEQ accepts it. But if we accept a

1 development that says you are going to use 2,000 a day
2 when they are at buildout, I have to have capacity for
3 2,000 a day. Whether or not people are --

4 The problem is if you are in one type of
5 community that doesn't have a lot of children, you don't
6 have a lot of dishwashing. You don't have a lot of
7 showers. You don't have a lot of clothing that you are
8 washing. Once you have a family in there, then that
9 changes. And so you have to have the capacity for what
10 type of household there is there.

11 And I think we were very luckily when ADEQ said
12 we could do a design of 187.2. What you were asking me,
13 what are the flows themselves and the flows at each area
14 is different. Right now the flows in Palm Shadows is
15 over 200 gallons per day. And it is the same number of
16 households.

17 ALJ RODDA: I think Commissioner Newman has a
18 question.

19 COM. NEWMAN: It is really just a repeat of the
20 question. And I have only been on the bench for three
21 months but I have been a lawyer for 18 years. So I am
22 trying -- the number, and somebody correct me if I am
23 wrong, the capacity of the plant is designed for what
24 number?

25 THE WITNESS: The full plant of Del Oro is

1 designed for 495,000 gallons per day.

2 COM. NEWMAN: Okay. 495,000 a day. And your
3 current use, current use --

4 THE WITNESS: Actual use.

5 COM. NEWMAN: -- or base year, actually current
6 use right now is?

7 THE WITNESS: Maximum of 265 a day.

8 COM. NEWMAN: What is the difference between 495
9 and 265? I will tell you it is -- 03 -- 230,000, almost
10 50, almost 50 percent, almost 50 percent, I would say
11 45 percent difference.

12 So I don't -- just tell me what you are talking
13 about when you are talking about flows. It seems to me
14 that 45 percent excess to the capacity of the plant is
15 exactly that. The original question was, as I remember,
16 don't you have excess capacity. And no matter what you
17 were talking about, it didn't make any sense to me that
18 that is not excess capacity.

19 So I will ask you, and just a yes or no
20 question, do you have 230,000 gallons excess capacity in
21 this plant, yes or no?

22 THE WITNESS: No.

23 COM. NEWMAN: Okay, fine. We will find out what
24 the true answer is.

25 THE WITNESS: I am --

1 MR. SHAPIRO: Mr. Capestro, there is no question
2 pending.

3 MS. WOOD: I would like to mark this next
4 exhibit R-12.

5 (Brief pause.)

6 BY MS. WOOD:

7 Q. Mr. Capestro, in front of you is Exhibit R-12.
8 It is seven pages. It is a copy of the minutes of the
9 Mesa Del Sol Property Owners Association, February 19th,
10 2008. Did you attend at that time?

11 A. Yes, ma'am.

12 Q. Okay. And at that time you provided a Far West
13 Water & Sewer Company report to the homeowners
14 association, correct?

15 A. That is correct.

16 Q. Okay. And at that time, you indicated that the
17 Omega, and this is on page 5 of 7, you indicated Omega
18 Lane plant, also known as Del Oro, when completed is
19 currently approved for 500,000 gallons per day?

20 A. That's correct.

21 Q. And this would double the size of the plant and
22 allow for another 1,780 homes to be built if the
23 developers wanted to do it, correct?

24 A. Correct.

25 Q. So is there excess capacity at Del Oro?

1 MR. SHAPIRO: Objection. It has been asked and
2 answered twice now.

3 ALJ RODDA: Can you explain this --

4 THE WITNESS: Yes, I can.

5 ALJ RODDA: -- what you meant when you said
6 that?

7 THE WITNESS: Yes, I can. This was based upon
8 187.2 gallons per day per household and what the excess
9 would be. That was before the County of Yuma was asking
10 for you to reserve capacity for 360 gallons per day per
11 household to 450 gallons per day per household.

12 I am not trying to be cute about this. What I
13 am trying to say is if -- when a development comes in,
14 they, you are required as the utility to say yes, I have
15 the capacity for an additional 50,000 gallons a day
16 because this is the design capacity. If we are at
17 187.2, there is extra capacity. If there is, if it
18 is -- if the new developments are at 360 or 450, then
19 the design capacity continues to reduce to the point
20 that you say this development is going to take this and
21 this one is going to take that.

22 And what I have been doing with developers, I
23 have been saying take a look at this because you are
24 going to have to pay for off sites based upon what your
25 flows are going to be. And if you are at 450, I am

1 going to have to reserve 450. And if they are telling
2 me the old homes are at 450, then it skews the numbers.
3 That's all I am saying.

4 ALJ RODDA: Does the county change the required
5 capacity for existing developments?

6 THE WITNESS: No. No, it does not. Then they
7 look at the actual flows. But in the past, there were
8 reports that they were accepting for much less than
9 187.2. We tried 110, 120, which ADEQ would not accept.
10 Then just in the last couple months I have been getting
11 these reports from developers saying these are design
12 flows that I need. And I am saying, you know, okay,
13 then we are going to have to take another look at the
14 drawing board if that's how much you are going to have
15 to be per household. It is --

16 ALJ RODDA: But you are talking about
17 developers. So when, when I hear you say that, I am
18 thinking these are not houses that are there yet.

19 THE WITNESS: No. No. I am talking, we are
20 talking about how much excess flow there is and do we
21 have that much excess. I don't know. I don't know what
22 the county or the ADEQ is going to be requiring.

23 It is not -- if ADEQ sticks with just actual
24 flows, then I am in good shape and then I do have excess
25 capacity. If they are saying these have already been

1 committed to, these are the developments we have already
2 approved -- ADEQ has already given letters to various
3 subdivisions over there saying yes, we could open up
4 Estrella II and some other places that are owned by the
5 development group and Eddie Lou and those places, so...

6 ALJ RODDA: So, but if the existing development
7 in there now you say has an actual flow of 265,000
8 gallons a day --

9 THE WITNESS: Correct.

10 ALJ RODDA: -- if that capacity is at 495, there
11 is 230,000 gallons of excess capacity.

12 THE WITNESS: That we are not using at the
13 present time.

14 ALJ RODDA: Right, exactly.

15 THE WITNESS: You are right about that. It is
16 just whether or not it is excess capacity that I can use
17 based upon ADEQ standards. That's all I am saying.

18 COM. NEWMAN: Who should pay for that is the
19 second question.

20 THE WITNESS: The excess capacity? Personally,
21 I think that any people that get, you know, should --
22 new development should pay for off-site improvements.

23 The problem you have here is a question as to
24 what the price is for 300,000 gallons a day versus 495.
25 And to be able to get to A plus effluent for 300 is

1 almost the same price as 495. It is the addition of
2 cassettes. And --

3 COM. NEWMAN: Can I ask another question?

4 Another shot. Now, a lot of the people that
5 came that night, and I haven't toured all your whole
6 service area, the main thing, live in trailers. They
7 don't live in huge homes. They don't even have 2.3
8 people. Some of them have one people. Some have two
9 people. These are small entities. These are small
10 trailers.

11 So this testimony, this is what I don't
12 understand about your testimony, if you are talking
13 about the 300 gallon number, those are gallons for very
14 big new units that are planned. Now, we have to
15 determine what we need to charge the ratepayers. And it
16 seems to me that you are getting, just by your own
17 testimony, the ratepayers are not getting a fair shake
18 because you are making them pay for the plant that could
19 go for future development with big houses. And these
20 people are on fixed incomes and trailers.

21 I am glad I am here today because sometimes you
22 can't get this from a blank testimony. And that's, when
23 I asked you the original question, the deficit, and you
24 were telling me something about Yuma County and how big
25 the houses can be, listen, I was a county supervisor for

1 eight years. All the county supervisors in the state
2 are under a huge problem because we can't say yes to
3 development if there is no water and if there is no
4 sewage. And in places like Cochise County we have
5 conservation subdivisions trying to limit the amount of
6 water people are doing. And, in fact, there should be
7 conservation subdivisions all over the state, including
8 Yuma County.

9 So I just, so I -- you know, thank you for your
10 testimony, but do you want to comment on these people
11 that you want to raise the rates on an emergency basis
12 to pay for this plant, where there is excess capacity?

13 THE WITNESS: But it is, you are only talking
14 about Del Oro.

15 COM. NEWMAN: I understand.

16 THE WITNESS: And right now Palm Shadows is
17 overcapacity, and it has to be closed. That will take a
18 minimum of what is flowing today of 300,000 gallons a
19 day down to plant, to Section 14. Whether or not we
20 build over at Palm Shadows or at Section 14, it would
21 have been, you know, a big increase.

22 The problem that we have is that at Palm Shadows
23 there is no place to put the effluent. So you have to
24 go down 45 feet to get past the clay to even try to use
25 a vadose well to be able to put it in. So the cost to

1 these people is less for moving it over to Section 14.

2 The other thing is we elected not to do Marwood
3 to reduce the cost, and leave that as a B effluent. We
4 also elected to use as much plant as possible that was
5 already there to reduce the cost. We bid this thing out
6 to make sure that the cost was lower than other places
7 with membrane filtration. We were trying everything we
8 could to reduce the cost.

9 Now, we have a certain cost. There is a special
10 rate for RV lots, RV parks, the like, with a certain
11 amount. The problem that you have with these people
12 that are living in RVs is most of the places are
13 designated RVS, which means that they could have two RVs
14 on the same sewer and you could have one RV and a home
15 or you could have a home.

16 Our experience is that people will have two RVs,
17 sometimes three, sometimes more, and then they will
18 decide they don't like the RV they are living in anymore
19 and then move to, you know, a house. And they will keep
20 their RV next to it. Nothing can be done to stop that
21 because that's what it is zoned for.

22 If you are looking at most of the Palm Shadows
23 plant, almost all of that is homes. You look at almost
24 everything around Mesa Del Sol and the Del Oro plant,
25 that's almost all homes. I don't think there is any RV

1 over there.

2 So, yes, there are some RVs. Are we trying to
3 reduce the cost? Yes, we are trying to. I am trying to
4 respond as best I can as to what ADEQ requires us to
5 have for capacity versus the actual flows. And if I
6 could have stayed with the actual flows, if I could have
7 stayed with Marwood and Section 14 and not done anything
8 with the other plants, I would have been the happiest
9 man alive. But there were problems with those plants
10 actually getting to the nitrate removal. And once we
11 tried to do the nitrate removal, the engineer said it is
12 going to cost you as much just to go to A. And that's
13 where everybody is going anyway.

14 So we did what we could to reduce the cost. And
15 if there could be something that just says a certain
16 amount for RV, then we have to go over there and find
17 out if they put a house on it.

18 I understood where the person was coming from
19 because you use a lot more -- less in an RV. You don't
20 shower very much. You don't take a shower every day
21 because it is RV living.

22 COM. NEWMAN: That was the basis of my question
23 and not understanding why you were talking about these
24 volumes of 300 for an RV. That's, that's --

25 THE WITNESS: It was an area that wasn't really

1 RVs, because those areas, in fact most of your RV living
2 are on septic tanks anyway. The newer subdivisions that
3 are on sewer, they are RVs. And there are some RVs
4 alone there, but most of them have a house and an RV.

5 COM. NEWMAN: Thank you.

6 MR. SHAPIRO: Judge Rodda, could we take a
7 break?

8 MS. WOOD: Could I ask one more question?

9 ALJ RODDA: Ask a question.

10 THE WITNESS: Can I vote no?

11 BY MS. WOOD:

12 Q. Assuming 187.2 gallons per day for the potential
13 development in the Del Oro service area, you have
14 capacity for 1,780 more homes, correct?

15 A. Yes.

16 MS. WOOD: Thank you.

17 ALJ RODDA: All right. Let's take a break until
18 like 4:30.

19 (A recess ensued from 4:20 p.m. to 4:36 p.m.)

20 ALJ RODDA: Let's go back on the record. And we
21 will just, we are just going to go to 5:00 today because
22 it has been a long day already. And we will start up
23 tomorrow at 9:00 and see where we end up tomorrow, and
24 schedule a third day tomorrow or -- anyway.

25 So, Ms. Wood, did you have some more questions

1 for this witness?

2 MS. WOOD: Yes, I do.

3 ALJ RODDA: I know we keep interrupting you. It
4 is totally not your fault.

5 MS. WOOD: Oh, it is, but that's okay. It is my
6 fault. So I will try and keep it going.

7 BY MS. WOOD:

8 Q. Mr. Capestro, you indicated that it was, you
9 paid \$420,000 for the engineering for the additional
10 capacity at Section 14, correct?

11 A. I paid them \$420,000 to engineer and prepare an
12 APP to be delivered to ADEQ and to follow it up until
13 the APP was finally finished and approved.

14 Q. All right. How much is the cost of expanding
15 that plant going to cost? Just not the engineering but
16 the actual construction, how much will that cost?

17 A. The engineer's estimate is four million two.

18 Q. How much of that construction has already been
19 done, or none of it has been done?

20 A. None of it.

21 Q. Okay. We asked for a data request 5.09 with
22 regard to that issue.

23 A. Uh-huh.

24 Q. And you responded through counsel by e-mail.

25 And I say you as in Far West water company. And I am

1 going to show --

2 A. Am I a real person anymore?

3 Q. The judge asked me to clarify who I was talking
4 about when I said you. So that's why I am trying to be
5 extra careful.

6 I am going to give you what is marked as R-7.

7 A. What happened with B through R?

8 (Brief pause.)

9 BY MS. WOOD:

10 Q. Now, in this e-mail, the response to 5.09 is the
11 cost of extending plant from 1.3 million gallons a day
12 to 2.0 million gallons a day is estimated to be
13 4.2 million, or marginal cost.

14 And down below it says marginal cost means
15 adding to an existing plant; a plant for 700,000 gallons
16 per day standing alone would be much higher.

17 Is that part and parcel the response?

18 A. Yes.

19 Q. Is it your testimony here today that you have
20 spent no money on the improvements necessary for that
21 expansion from 1.3 to 2.0 million gallons a day?

22 A. That's correct.

23 Q. Okay. I should clarify other than the
24 engineering, 420,000.

25 A. You asked about construction.

1 Q. Yes. Okay.

2 Your Honor, I guess I would like to ask which
3 exhibits I have not asked for the admission of. I think
4 I have through R-7 right now.

5 ALJ RODDA: Well, since we didn't go in order,
6 the only one I have admitted is R-2. So you have got
7 R-1, which is the financing application. You have got
8 R-5, which was the golf course bills. You have got R-6,
9 the updated sewer project budget; R-7, the e-mail
10 response to data request 5.09; and R-12, the Mesa Del
11 Sol homeowners meeting.

12 MS. WOOD: I ask for admission of those
13 exhibits, R-1, 5, 6, 7, and 12.

14 ALJ RODDA: Any objections to those?

15 MR. SHAPIRO: Let me take them one at a time.

16 There is no objection to the financing
17 application, which is R-1.

18 ALJ RODDA: And R-1 is admitted.

19 (Exhibit No. R-1 was admitted into evidence.)

20 MR. SHAPIRO: There is no objection to R-12,
21 which are the minutes.

22 ALJ RODDA: Let's admit R-12.

23 (Exhibit No. R-12 was admitted into evidence.)

24 MR. SHAPIRO: R-5 is the Golf in the Foothills,
25 no objection.

1 R-6 is the updated budget, no objection.

2 If Ms. Wood would put the data request itself
3 in, we would have no objection to R-7, but this e-mail
4 doesn't have the actual data request, I don't think.

5 MS. WOOD: We will be offering that up as a
6 separate exhibit.

7 MR. SHAPIRO: Okay.

8 MS. WOOD: Because you did them separately.

9 MR. SHAPIRO: So as long as the data request is
10 ultimately part of the record in addition to the
11 response, then we don't have an objection.

12 ALJ RODDA: Okay. So we will admit R-5 and R-6
13 at this time.

14 (Exhibits Nos. R-5 and R-6 were admitted into
15 evidence.)

16 ALJ RODDA: I already said we would do R-12 and
17 R-1.

18 Do you want me to reserve R-7 or provisionally
19 admit it?

20 MR. SHAPIRO: Based on Ms. Wood's representation
21 that she will ultimately offer the actual request 5.09,
22 we are fine.

23 ALJ RODDA: Okay. Let's admit R-7.

24 (Exhibit No. R-7 was admitted into evidence.)

25 MR. SHAPIRO: I think I may have missed -- oh,

1 R-11 you withheld, so okay.

2 BY MS. WOOD:

3 Q. All righty. With regard to Section 14, you have
4 submitted an APP permit application and received the
5 actual aquifer protection permit from ADEQ?

6 A. We received the aquifer protection permit from
7 ADEQ and we also received a reuse permit.

8 Q. Okay. The permit is so you can discharge the
9 reuse associated and you can use the effluent on the
10 golf course?

11 A. No.

12 Q. What is it for?

13 A. The reuse discharge, the APP itself is for the
14 actual treating of the influent.

15 Q. I am going to give you what is marked as
16 Exhibit R-8.

17 (Brief pause.)

18 BY MS. WOOD:

19 Q. Is what has been marked R-8 a copy of the
20 Aquifer Protection Permit No. P-105014 that you received
21 from ADEQ?

22 A. Yes.

23 Q. Okay. And looking on page 18 of 35 --

24 A. 18 what?

25 Q. Page 18 of 35.

1 A. Okay.

2 Q. You said that this project would be done in
3 phases, correct?

4 A. That's on page 2.

5 Q. Okay. What are the phases that are going to be
6 done?

7 A. Page 2 provides the new WWTP will be constructed
8 in phases. The first phase, phase one, shall be
9 authorized to operate up to 0.681 mgd with five membrane
10 cassettes and a vadose well, recharge well in VZ-1 in
11 service. Future phases will be authorized to operate up
12 to the flow rate determined by the capacities of the
13 vadose zone recharge wells VZ-1, VZ-2, parentheses,
14 future, VZ-3, parentheses, future, and the addition of
15 0.1625 membrane capacity -- mgd capacity membrane
16 cassettes up to a maximum eight cassettes for a total
17 WWTP capacity of 1.3 mgd.

18 Q. So right now there are five membranes and you
19 are authorized up to 681,000 gallons per day?

20 A. Right now we have the capacity for five
21 membranes. Those membranes are not in yet. They won't
22 be in until Zenon comes over to help do it.

23 Q. Okay.

24 ALJ RODDA: Are any of them in?

25 THE WITNESS: No. They are all at our storage

1 facilities, kept -- they, for them to -- once we take
2 them out of their packages they have to stay a certain
3 temperature. Then we have to have a flow going through
4 them the whole time. We can't get the flow going
5 through them until representatives of Zenon are out
6 there to help install them.

7 BY MS. WOOD:

8 Q. Now, going back to page 18 of 35 of the aquifer
9 protection permit --

10 A. Yes.

11 Q. -- ADEQ in this permit identifies the average
12 monthly total effluent flow for phase one, correct?

13 A. Where is that?

14 Q. I am looking at the first chart, Table IA.

15 A. Okay.

16 Q. And they have two levels. One is the alert
17 level and the other is the discharge limit, correct?

18 A. That's the level at which we have to report to
19 ADEQ if we exceed it.

20 Q. Okay.

21 ALJ RODDA: Which?

22 THE WITNESS: The DL level.

23 ALJ RODDA: The DL level?

24 THE WITNESS: The .681, that's the maximum
25 capacity.

1 BY MS. WOOD:

2 Q. So just to clarify the record, 681,000 is the
3 discharge limit, correct?

4 A. Max, yes.

5 Q. Max. The alert level, the point at which you
6 have to talk to them about moving into the next phase,
7 is 544,000 gallons per day, correct?

8 A. Correct.

9 Q. And you indicated this plant is not in service
10 right now?

11 A. Well, a smaller plant is, the older plant, not
12 the new one.

13 Q. So the permit that's going to be authorized by
14 this APP is not in service right now?

15 A. No. Well, by this APP, that part is not in
16 service. The Somat dewatering unit is.

17 Q. And the holdup, you said, is Zenon coming in to
18 install the membranes?

19 A. On this plant, they want upfront over \$800,000
20 before they will come in and do it. So between the two
21 they want a million two plus payments on the million
22 seven we owe them.

23 Q. Do you still have R-6 in front of you?

24 A. Which one is that?

25 Q. That's the updated sewer.

1 A. Yes.

2 Q. Of course I am the only one that can't find the
3 updated sewer.

4 On the Exhibit R-6, on page 1, it indicates for
5 Section 14 that you are going to spend a total of
6 \$7,697,928 for the contract, updated contract amount,
7 correct?

8 A. Correct.

9 Q. How much of that have you already spent?

10 A. You mean actually paid for or spent?

11 Q. Paid for.

12 A. I don't have the numbers in front of me but I
13 think it is close to \$6 million.

14 Q. Okay. Can you look at, I think it is, the fifth
15 page of the exhibit, the one entitled Section 14
16 wastewater treatment plant.

17 A. Yes.

18 Q. Can you identify for us which of these contract
19 items has not yet been performed. And I know obviously
20 the three future cassettes for the 1.3 by virtue of your
21 prior testimony has not been done, correct?

22 A. That is correct.

23 Q. Okay.

24 A. The Zenon plant, we have paid approximately 900
25 of the two million one. We owe about a million two on

1 that. The tankage was purchased earlier. The mixers
2 are in. The transfer pump is in. The grit removal
3 equipment is in.

4 I do know that the blowers, wherever they are,
5 the UV equipment has not been paid for. The blowers
6 have not been paid for. These have blowers of 184,000.
7 There must be another blowers because there is 225,000
8 that's owed for blowers.

9 Part of the mechanical has not been paid for and
10 part of the electrical has not been paid for.

11 To finish --

12 Q. Before you go on, who is the electric and
13 mechanical owed to?

14 A. Amtek Electric is the electrical company.

15 Q. Okay.

16 A. They are owed 98,000 to be billed plus they are
17 owed another 298,000 of what has been billed. Midwest
18 Environmental will be owed another 142,388 when they
19 finish. Delta Environmental still has, has not billed
20 us yet for 99,000 of blowers, I believe, that they --
21 diffusers.

22 Q. You are going to have to slow down for me. You
23 are saying the names of companies that are not on the
24 list.

25 A. When you go to this list, this is the list of

1 what it is based upon several contracts.

2 Q. Okay.

3 A. And when you come down here and take a look at
4 things, they bunch them up.

5 ALJ RODDA: Do you have a schedule somewhere, I
6 mean probably not in front of you or you would be
7 looking at it, that breaks these amounts out to what has
8 been paid and what is future?

9 THE WITNESS: Definitely.

10 ALJ RODDA: Because I think it is in your
11 testimony or someone's testimony the combined, the
12 aggregate numbers, but I didn't see, you know, a
13 breakdown of what those numbers are.

14 THE WITNESS: I have a breakdown of everything
15 that has gone out so far and what is still owed as far
16 as being billed to date is concerned. I went through
17 all the contracts and found out what had not been billed
18 to be able to do the -- to prepare my testimony.

19 ALJ RODDA: Right.

20 THE WITNESS: So I do have the records. We did
21 produce with the accounts payable list the two million
22 nine that's owed. And it breaks it down to the various
23 people as to what is owed. And one million six to
24 one million seven of that two million nine is payable to
25 Zenon Corporation, which is a part of GE.

1 ALJ RODDA: Okay. And did you provide that
2 breakdown of the accounts payable to the parties?

3 THE WITNESS: Yes, we did.

4 ALJ RODDA: They probably asked for it.

5 THE WITNESS: Yes, we did.

6 ALJ RODDA: Is someone going -- were you going
7 to introduce -- am I going to see that sometime? I
8 would like to see that. I don't know if anyone was
9 planning on going through it.

10 BY MS. WOOD:

11 Q. Maybe I didn't see it in the material you
12 provided to me, Mr. Capestro, but I don't have a list of
13 the unpaid bills. I have a list of bills you paid.

14 A. We provided an AP list. Mr. Bourassa is sitting
15 there holding onto it.

16 Q. Excellent.

17 A. And it was broken down to what plant it was,
18 whether it was water or whether or not it was other
19 bills that was part of the three million four that was
20 owed.

21 Q. Okay, thank you.

22 A. I am sure that tonight you will go take a look
23 at it and I will get more questions tomorrow.

24 MR. SHAPIRO: I don't know if it was provided as
25 part of the work papers or part of a responsive to a

1 data request.

2 THE WITNESS: It is part of the work papers that
3 we provided it.

4 MS. WOOD: Okay, thank you.

5 MR. SHAPIRO: But we will be happy to provide
6 one for you, Judge Rodda.

7 BY MS. WOOD:

8 Q. In your testimony you say it is going to cost
9 557,000 to make Section 14 operational. Is that the sum
10 total of what you need to get it going?

11 A. No, no. The 557,000 is in addition to the
12 two million nine that's already owed. This is for
13 electrical, the mechanical blowers, diffusers and the
14 like.

15 Q. So how much --

16 A. It was the testimony that it was limited to just
17 Section 14 or Section 14 and Del Oro.

18 Q. Well, what I am reading from page 12 of
19 Exhibit A-1, I believe is your testimony, it says we do
20 not have \$4,463,000 to finish the plant improvements and
21 bring, and it lists three plants, well, actually two
22 plants and the force main, on line. And it says with
23 specificity to the Section 14 wastewater treatment plant
24 there is another 557,996 still to be billed to Section
25 14.

1 So you are saying it is 557 plus some other sum
2 for Section 14?

3 A. What page are you looking at again?

4 Q. Page 12.

5 A. I just looked at page 12.

6 Q. Lines 13 through 18.

7 A. Okay. Yes. Now, what it says there is another
8 557,996 still to be billed for Section 14 and the Del
9 Oro wastewater treatment plant. It says for both of
10 them. So that's --

11 Q. How much will it take to get Section 14 on line?

12 A. In addition to what is already owed?

13 Q. Both.

14 A. I would have to go through the AP list of
15 2,932,000 to say which was, which was Del Oro and which
16 was Section 14.

17 Q. So you, sitting here today, you don't know how
18 much it would take to get Section 14 on line because you
19 don't have that amount of detail?

20 A. I know that I owe approximately a million two to
21 Zenon. I know that I owe \$300,000 to Amtek Electric for
22 their big generator they put there. But without going
23 through the list especially for that particular plant, I
24 would have to take a look at the data. The 557,996 is
25 just still to be billed. That was not billed by Amtek,

1 Delta and the like.

2 Q. So when you say 80 percent of the construction
3 is completed, that doesn't refer to the amount of money
4 you put in it, it is toward the items that needed to be
5 completed, the actual construction?

6 A. I did not do the percentages of what was paid
7 versus what is owed.

8 Q. Okay. Has H&S development benefited from the
9 completion of Section 14?

10 A. H&S development without the transfer of Palm
11 Shadows to Section 14 had enough capacity for its
12 present developments. And Marwood had sufficient
13 capacity for its El Rancho Encantado development. So
14 the immediate answer is no.

15 Q. Well, what are the names of the developments
16 that are, as you said, existing?

17 A. Ravines, which has 83 lots left in it, and El
18 Rancho Encantado, which has 91 lots.

19 Q. Rancho Encantado has 91 lots in phase one. How
20 many does it have throughout the entire developments?

21 A. Phase one and phase two will be 222. However,
22 both -- El Rancho Encantado is paying for its off site,
23 its share of the off-site improvements just like the Las
24 Barrancas subdivision owned by Elliott paid for its off
25 site, its share of the off sites.

1 Q. What are the off sites that you, they are paying
2 for?

3 A. What are they paying?

4 Q. Yes. What do you mean by off sites?

5 A. It is a share of the new plant.

6 Q. Okay. How much did they pay Rancho Encantado?

7 A. Rancho Encantado was, for phase one, was just
8 under \$200,000.

9 Q. But when you complete Rancho Encantado,
10 according to your disclosure to data request 5.07 and
11 5.08, you will have 430 homes?

12 A. And it will pay its share.

13 Q. Okay.

14 A. Just like I had in my disclosure statement, we
15 intend all developers pay their share of off sites.

16 Q. Even if you have capacity in the plant already?

17 A. I don't understand the question.

18 Q. Well, are you going to require the developers
19 provide funding for backbone infrastructure if you
20 already have capacity?

21 A. It is part of the financing. There is not
22 enough in the financing to cover everything.

23 Q. Okay. On page 29, I am looking at your
24 testimony, and just trying to clarify that, in response
25 to the question between 13, lines 13 to 15, it says what

1 about new developments, does company require that
2 developers provide funding for backbone infrastructure.

3 And you say yes, to the extent that treatment
4 capacity is not available, and it has not been for some
5 time. I guess you have ADEQ and county moratorium
6 issues.

7 So if you resolve your issues with ADEQ with
8 regard to Section 14, will the new developments, Rancho
9 Encantado, 430 new homes; Ravines, 361; and Las
10 Barrancas, 369 homes, pay a portion toward the capacity
11 to satisfy their needs?

12 A. That's my intent.

13 MR. SHAPIRO: Objection -- excuse me,
14 Mr. Capestro -- calls for speculation as to what the
15 capacity will be available at the time these developers
16 enter into future line extension agreements.

17 BY MS. WOOD:

18 Q. Who owns Ravines, Rancho Encantado and Las
19 Barrancas?

20 A. Las Barrancas is owned by the development group
21 which is was acquired by Harry Elliott.

22 Q. Okay. I am speaking of Barrancas II and III.

23 A. Barrancas II and III, I believe that they are
24 still owned by the Schechert Trust.

25 Q. And the Schechert Trust --

1 A. Is Dorothy Schechert.

2 Q. And that's an affiliated entity?

3 A. She, she does not own any of Far West Water but
4 she does own 69 percent of H&S Developers.

5 Q. Who are the beneficiaries of the trust?

6 A. Dorothy Schechert is the lifetime beneficiary.

7 Q. And after that?

8 A. Paula Capestro and Sandy Braden.

9 Q. Now, the exhibit they are talking about I want
10 to give to you is --

11 MR. SHAPIRO: Are we going to stop, Judge Rodda,
12 being after 5:00?

13 ALJ RODDA: Yes. Are we going to move -- is
14 this a new little area? I think we should stop --

15 MS. WOOD: Sure.

16 ALJ RODDA: -- and pick up tomorrow at 9:00,
17 because I think we have been going quite awhile. I
18 think it will go better.

19 MS. WOOD: Sure.

20 ALJ RODDA: So we are adjourned for today. I
21 will see some of you back here at 9:00 tomorrow.

22 (The hearing recessed at 5:02 p.m.)

23

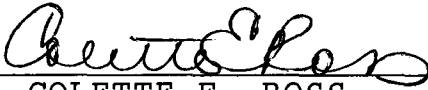
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5
6

7 I, COLETTE E. ROSS, Certified Reporter No.
8 50658 for the State of Arizona, do hereby certify that
9 the foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13
14 WITNESS my hand this 13th day of April, 2009.
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20 COLETTE E. ROSS
21 Certified Reporter
22 Certificate No. 50658
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